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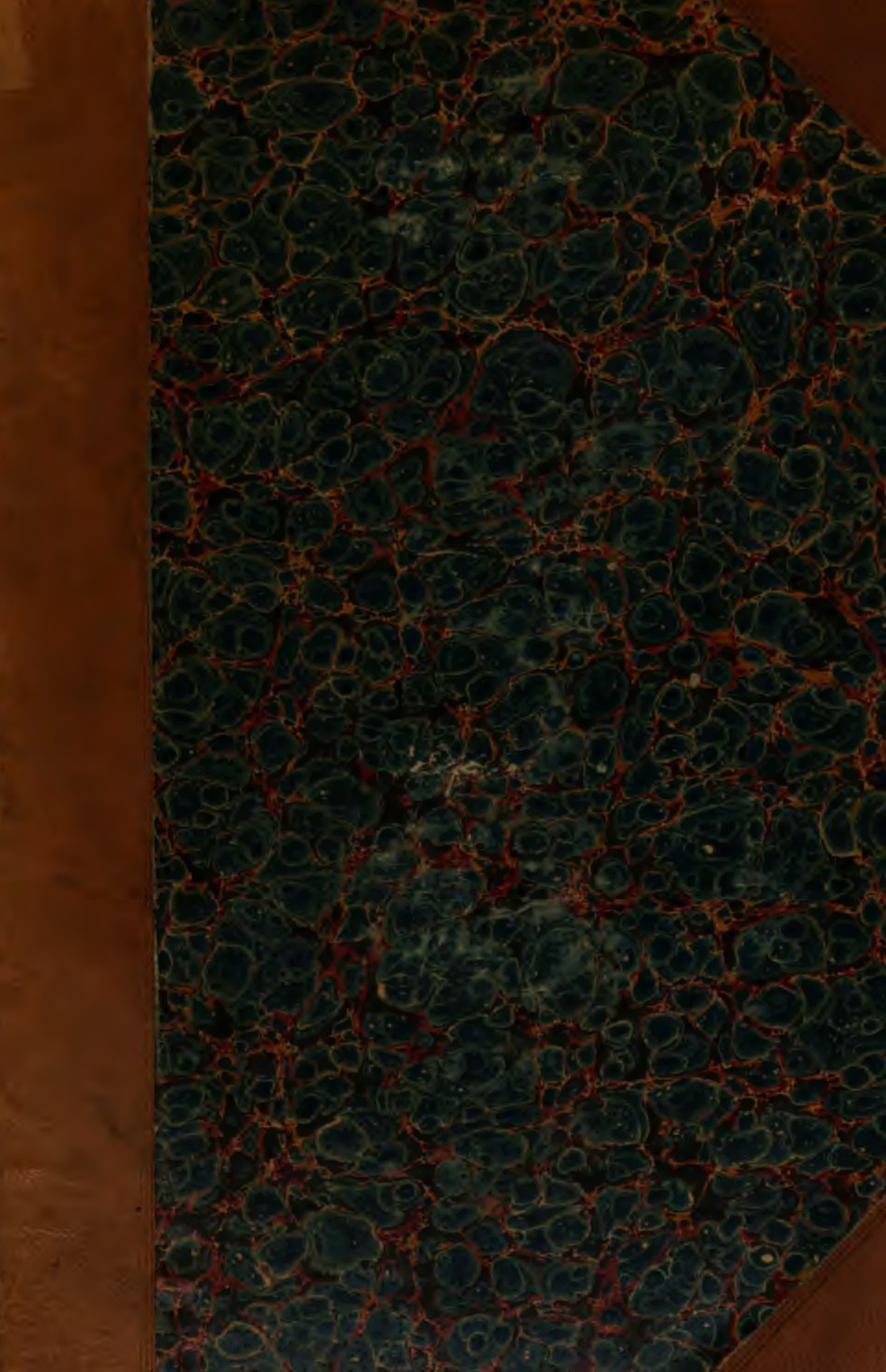
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# THE JURIST.

LONDON, JANUARY 14, 1865.

THE doctrine that an infant is not liable on a contract entered into by him during infancy, except for necessities, unless such contract be confirmed by him after he has attained the age of twenty-one years, is constantly before the Courts; but the question is always raised under the exception to the rule. The whole difficulty that arises turns on the meaning of the word "necessaries;" and the question, what are or are not necessities, depending, as it does, entirely on the varied conditions and circumstances of the infant, will and must often be under consideration. The list of necessities has lately received a new and important addition, in the case of *Helps and Another v. Clayton*, decided by the Court of Common Pleas in Michaelmas Term last, and reported 10 Jur., N. S., part 1, p. 1184. The decision in that case may be considered to have still further developed the doctrine as to the liability of infants for what constitute necessities. It establishes the principle, that in some cases, and under particular circumstances, not only articles of bodily sustenance, education, personal ornaments, convalescent expenses, but even the costs of obtaining a legal assurance of a suitable provision for life, may be construed to be a necessary, for which an infant will be liable. In *Helps and Another v. Clayton* an action was brought to recover the amount of a solicitor's bill of costs for preparing a marriage settlement; and although the question the Court decided was, to some extent, one of fact, the Court being at liberty to draw inferences of fact, yet the judgment of the Court must be taken to decide a question of law; for although the question, whether articles supplied to an infant are necessities, is one for the jury to decide, yet they are to do so under the guidance of the Court, by rules already laid down in numerous decisions. The Court, in *Helps and Another v. Clayton*, decided that a marriage settlement may be a necessary for an infant, and was so on the facts stated for the opinion of the Court in that case. The question in such cases, turning, as it does, on the status of the infant, a marriage settlement will certainly be held in future, on the authority of that case, to be a very common necessary for an infant. The facts in *Helps and Another v. Clayton* were shortly as follows:—The plaintiffs were solicitors practising at Gloucester, where the lady's father, Captain Somerset, resided. They had before been employed by Captain Somerset. In August, 1862, the defendant, being engaged to be married to Captain Somerset's daughter, who was at that time an infant under twenty-one years of age, Captain Somerset called on the plaintiffs, with a letter from the defendant to him, containing certain proposals for a settlement, and instructed the plaintiffs to prepare settlements, and named a trustee on behalf of the lady. Some communication took place between the plaintiffs and the defendant's solicitors, as to whose duty it was to prepare the deeds, but in the end the settlements were pre-

pared by the plaintiffs, and were executed both by the lady and the defendant. The marriage took place, and the defendant afterwards refusing to pay the costs of preparing the settlements, an action was brought which resulted in a special case, stating the above facts, for the opinion of the Court of Common Pleas. The case was argued in the Sittings after Trinity Term, and the Court took time to consider its judgment; and in last Michaelmas Term Mr. Justice Willes delivered the unanimous opinion of the Court, holding that the defendant was liable to pay the costs of the settlement. The Court of Common Pleas expressly held that the husband is liable to reimburse the expenses of the settlement, which the lady, her father, or person standing in loco parentis may have incurred. Mr. Justice Willes puts the decision upon this ground as distinguished from the ground of any express agency, in support of which the facts supplied some evidence. Mr. Justice Willes observes in the course of the judgment, "The employment of the lady's solicitor to prepare the settlement is not a mere matter of compliment or patronage: it has also the substantial object of satisfying the lady's friends that all proper care has been exercised on her behalf by some person in whom they confide, and of giving a remedy for negligence by action against the solicitor." As to the power of an infant to enter into such a contract, Mr. Justice Willes goes on to say, "The principal contract of marriage was one which it was competent for an infant to enter upon. She had no property to settle, and would have had no certain provision without the settlement; and the preparation of the settlement was, therefore, beneficial, as securing to her at her election a proper provision, which may justly be considered a necessary suitable to her estate and condition." Certain articles have been held to be necessities: meat, drink, wearing apparel, lodgings, medical advice, and medicine, are beyond all doubt necessities for which an infant will always be held liable; but the term "necessaries" is not confined in all cases to such matters as are positively required for the infant's bodily sustenance. A suit of livery for the servant of an infant, who was a captain in the army, was held to be a necessary for which the infant was liable. (*Vide Hands v. Slaney*, 8 T. R. 578). So, too, a gold watch and breast-pin have been held to be necessities for an undergraduate at a university, who was the eldest son of a member of Parliament, and a gentleman of fortune. (*Peters v. Fleming*, 6 M. & W. 42). So, where an infant was an invalid, and horse or carriage exercise was recommended by a medical man, and was resorted to by the infant, for the restoration of his health, these were held to be necessities for which the infant, having contracted, was bound to pay. (*Hart v. Prater*, 1 Jur. 623). We cite these cases to shew the extent to which the Courts have gone in deciding what are or are not necessities. It would be hopeless to attempt to define any list of articles which are or are not necessities. Many articles obviously unnecessary in the case of most infants, have been held to be necessities under certain circumstances. Indeed, until each separate want has received a judicial decision, a tradesman



supplies a minor with articles beyond those required for bodily sustenance at his peril. Of course, we speak beside the question of agency, as in the case of infants who reside under the parental roof. They are supplied on the principle of agency. They are supposed to have a right to pledge the parent's credit for necessities, though the fact that the articles supplied are necessities is not conclusive of the authority. So, in the case of a feme covert residing with her husband, who is also considered, for many purposes, the agent of the husband to contract for the supply to her of articles necessary for her condition in life; but this principle rests entirely on what authority she may have, a married woman having no authority by virtue of marriage to pledge her husband's credit. Yet both in the case of an infant living with his parent, and a wife residing with her husband, a much wider power to contract would probably be held to be authorised, especially if the parent or husband respectively was aware that such articles had been supplied. No doubt, in *Helps and Another v. Clayton*, if the marriage had never taken place, the defendant would not have been liable at law to pay the costs of preparing the settlements. Probably Captain Somerset would have been liable, he having expressly employed the plaintiffs to prepare the deeds; indeed, an action was commenced against Captain Somerset. The case can hardly amount to a decision that a husband is liable at common law to pay for his wife's marriage settlement, but practically he will be held, wherever there is a settlement, liable to pay the costs; because the decision does amount to this—that the contract is for the benefit of the wife; and if the marriage afterwards takes place, and the costs be not paid before marriage, the husband will be liable on the contract of the wife entered into before marriage; and that, as the case expressly decides, though the wife was an infant when the contract was entered into, it being for the benefit of the wife, and in most cases, where there is any property to form the subject of settlement, the infant will be liable on the contract, and consequently the husband, for the contract entered into by his wife *dum sola*, if the action be brought during the coverture.

In ordinary experience, every married man in the wealthy ranks of society is practically well acquainted with the professional rule, that the lady's solicitor prepares the settlement, and the husband pays the costs of such preparation. We may look upon the case as an important decision, that if a marriage settlement be suitable to the rank and condition of an infant, he or she, whichever the case may be, is liable on such a contract as on a contract for a necessary; and if the infant be a woman who afterwards marries, the husband is liable as on a contract entered into by his wife whilst sole, and on which he would, of course, be liable on marriage. Courts of equity have for many years upheld the settlements of personal estate of infants under age, and in the case of female infants, on the principle, that the settlement was the settlement of the husband, the object being to cut down the interest of the husband. Courts of equity having, therefore, expressly held the validity of a contract embodied in a

deed of settlement, and held it binding, though it probably, in most cases, would be personally not beneficial directly to the settlor, as operating to cut down his or her interest. It would seem, therefore, to follow, that if the substance of such a contract is binding on an infant on the equity side of Westminster Hall, the costs incurred in creating such a contract should be held to be a necessary on the common-law side. Lastly, we may observe, that stat. 18 & 19 Vict. c. 43, enables an infant, with the approbation of the Court of Chancery, to make a binding settlement, even of real estate. We have said the decision is important, as adding another judicial authority to guide us as to what are or are not necessities for an infant. In practice a husband will, in almost every case where there is a settlement, be liable to pay the costs of the settlement prepared by the wife's solicitor, whether incurred with his express authority or not; and that the practice, which is almost universal, for the wife's solicitor to prepare, and the husband to pay the costs, has received, if not quite judicial authority, at all events judicial notice, and express sanction and approval. This will be satisfactory to solicitors, and will, as Mr. Justice Willes observes, render "the employment of the lady's solicitor not a mere compliment or matter of patronage." The case, at all events, decides, "that a settlement, which affords a provision for an infant, who on her marriage had no other certain provision, is a necessary."

### Review.

*A Compendium of the Law of Real and Personal Property connected with Conveyancing, designed as a comprehensive Record Book for Students, and a Digest of the most useful Learning for Practitioners.* By JOSIAH W. SMITH, B. C. L., Q. C. Editor of Fearn's "*Contingent Remainders*" and "*Miford's Chancery Pleadings*." Author of "*a Manual of Equity*," "*a Manual of Common Law*," and "*a Manual of Bankruptcy*," and one of the *Consolidators of the Chancery Orders*. Third Edition. 8vo., pp. 1322.

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A LEARNED but in this instance ill-informed contemporary has committed the ludicrous blunder of confounding Josiah W. Smith, Q. C., author of a sufficient number of "*Manuals*," with James Walter Smith, LL.D., author of an insufferable number of "*Hand-books*," and now better known as Müller (or to adopt our contemporary's more appropriate spelling, Muller) Smith, but no more like the author of the work before us, than he to John William Smith. Such accidents are inevitable in so large a family. It is time that the Legislature took the Smiths in hand for their own good, and dealt with their name as it once dealt with that of the McGregors. Not that an absolute proscription is necessary—a double income tax on every male that signeth Smith, Brown, or anything ending in —son, with free liberty to change to Herbert, Llanover, or De Vere, or any other name in or out of the court guide, would do the business.

A compiler, working on Mr. Smith's plan of laying all the text-writers under contribution, could hardly fail to collect a large quantity of useful matter, and, by arranging it conveniently, and adding a full index, to make a useful book of reference. This, Mr. Smith has done; and though, by giving the enactments which

come within the scope of his work, for the most part at full length, he has occupied much space that might have been better filled with less accessible matter (for have we not Welby's Chitty and Shelford?), he has not altogether failed of making his book "a digest of the most useful learning for practitioners."

But to the title of "a comprehensive second book for students" it has no claim. It is a collection of abridged extracts or summaries from a variety of sources, which may have passed through the collector's mind, but have not been refashioned by it, and have brought nothing from it; so they remain a lifeless collection of fragments, put together in tolerable order, but not coherent. Such books can never be readable, and are not for students. Even the collection or arrangement of the subjects is often rather in accordance with words than with ideas. Thus, after having in Part I treated "of the several kinds of things constituting the subjects of conveyancing," the author proceeds in Part II to consider "the several kinds of interests constituting the subjects of conveyancing;" and this is divided into ten titles:—1. Conditions and limitations on which interests depend, or by which they may be affected. 2. Freehold as distinguished from copyhold interests. 3. Copyhold interests. 4. Interests of freehold duration, and first of freeholds of inheritance. 5. Freeholds not inheritance. 6. Estates or interests less than freehold. 7. Estates or interests in severalty and in community. 8. Legal and equitable interests. 9. Interests clothed with the ownership and interests collateral to the ownership (subdivided into vested and executory interests—rights of equity or action, mere possibilities, mere adverse possessions and expectancies—powers and charges on lien). 10. Absolute and defeasible interests, and particularly interests by way of security (subdivided into absolute and defeasible interests, mortgages and interests under statutes, judgments, &c.) This is obviously not a natural arrangement.

The first title is subdivided into seven chapters:—

"1. Of the several kinds of conditions. 2. Of special or collateral limitations and conditional limitations. 3. Of the performance of conditions. 4. Of taking advantage of the breach of conditions. 5. Of void conditions and limitations. 6. Of the period to which the event of death, when mentioned in conditional language, as if it were a contingent event, is to be referred. 7. Of conditions generally." Here the 5th and 6th sub-heads are entirely out of place. Conditions may be void because they involve something which is immoral or contrary to public policy or is expressly prohibited by statute; but that is an accident in no way peculiar to conditions. What would avoid a condition would equally avoid a contract, a conveyance, or a trust. As to the 5th sub-head, "Of the period to which death is to be referred," it is obviously an isolated chapter on the construction of instruments. Again: the consideration of mortgages, if they are referred, as our author refers them, to the head of defeasible interests, ought not to be separated from that of conditions; while if they are regarded as securities for debts, they ought to be included in the third part of the book, where the administration of assets and priorities are treated of. In this third part, "Of the title to things constituting the subjects of conveyancing," we find an account of title by descent, but nothing of title by marriage. Title to real estate by marriage is treated of in Part II (devoted to estates and interests), under the heads of "dower" and "curtesy;" and title to personal estate by marriage in Part IV, among miscellaneous heads of law. These faults of arrangement do not much affect the utility of the book for reference, but they mar it as an institutional work.

## THE CONCENTRATION OF THE COURTS AND OFFICES OF LAW IN LONDON.

THE council of the Association for the Promotion of Social Science has published an address to the members of both branches of the Legislature, the municipal corporations of England and Wales, and the chambers of commerce, in connexion with the association, as well as others, "in favour of the two Government bills for purchasing a site for and erecting new law courts." Why the municipal corporations and chambers of commerce should be specially addressed on this subject is not apparent. Possibly the council of the association has private information that a good many of those bodies have plenty of leisure to attend to the affairs of other people.

The address, however, will do good, by furnishing to every one who takes an interest in the matter, a compendious account of the main features of the Government scheme. A rather indifferent plan of the site, and of the legal neighbourhood as far as Somerset House, accompanies the address. "Carey Street site" is thus described in the address:—

"It may be described, in general terms, as being bounded on the north by Carey-street, which runs at the bottom of New-square, Lincoln's-inn; on the south it has the main part of its frontage towards the Strand, a small part of it being in Pickett-street, which lies at the back of St. Clement Dane's Church; on the east it has a small street called Bell-yard, which runs parallel with Chancery-lane; and on the west it has for its boundary the walls of St. Clement's-inn. These boundaries inclose an area of seven acres and a half."

After explaining to the uninitiated the legal advantages of this site, the council proceed as follows:—

"The general public advantages offered by this site are equally striking. Situated partly in the city of London and partly in the city of Westminster, so that the structure raised upon it may be regarded as the common property of both, it is the centre of the metropolis which both combine to form; a more exact centre, a better compromise between the city and the west end, could not well be found. Every suburb has ready and constant access to it—by the Strand on one side, and Holborn on the other, which are the great arteries of London. A very slight outlay would afford an excellent approach from Holborn, either by the north-eastern or north-western corner of Lincoln's-inn-fields. The Metropolitan Railway in Farringden-street, the London, Chatham, and Dover at Ludgate-hill, the South-eastern at Charing-cross and Cannon-street, and the London and South-western at Waterloo-bridge, all, draining an immense town and suburban district on all sides, bring their passengers within an easy walk. And the approach by river, the sole advantage of this kind which Westminster affords, will be equally afforded here, for the Temple Pier is almost at hand, and may be rendered easily accessible.

"In this commanding position, which, as the Lord Chancellor has observed, seems 'as if created' for the purpose of this great improvement, it is proposed to bring together in one pile of building the superior courts of law and equity, the Probate and Divorce Courts, and the Courts of Admiralty, and all the various offices connected with each of these courts. The broad features of the scheme may be thus outlined:—

"The range of shops extending from Bell-yard, which is on the city side of Temple-bar, extending past Temple-bar along the north side of the Strand to Pickett-court, will be taken down, and the street

\* [His Lordship would have expressed himself more appropriately if he had said "left in chaos."]

widened so as to form a becoming approach on the south side.

"A second arch may probably be placed at Temple-bar, which will relieve the serious pressure of traffic so often and so much complained of. Over this double archway it is thought that a passage may be constructed, forming a communication uninterrupted by the traffic of Fleet-street, between the Temple, the new Thames embankment, and the river on the one side, and the new courts, Fleet-street, and the Strand on the other side.

"The buildings forming the western boundary of the narrow and unwholesome alley, called Bell-yard, will, of course, be removed, and this street, as well as Carey-street, will be converted into wide and useful thoroughfares.

"The only opposition to this site has come from the Hon. Society of Lincoln's-inn, who have objected to nothing but the removal of the equity courts from Lincoln's-inn. It is to be observed, with regret, that this opposition was based upon no wider foundation than the personal convenience and personal feeling of the members of this society; and it may be fairly urged upon this head, that even if these objections were well founded, they form no just ground of opposition to a scheme which would so greatly benefit the whole community. The objections, however, are of no weight. No sensible inconvenience will be caused to members of Lincoln's-inn by the transfer of the courts of equity to a spot which is within a stone's throw. No injustice is done to the society by the removal of courts, which exist for the public, from a place where they have been badly housed, to a place where they will prove most for the public good. It should be added, that the feeling of the other Inns of Court is entirely in favour of the proposed bills, and even in Lincoln's-inn it is understood that opinion is divided."

On the important question of the ways and means we have the following statement:—

"The cost of the new courts, including the cost of the site, has been approximately estimated by the officers of the Board of Works at 1,500,000*l.* This it is proposed to raise in the following way:—

"1. The value of the courts and offices at present belonging to the State, and the capitalised value of the rental of the courts and offices now rented by the State which will be set free by their removal to the new courts, and which are taken at 200,000*l.*, are to be paid by the Government.

"2. One million is to be contributed from a fund in the hands of the Court of Chancery, which amounts to 1,291,000*l.* This fund, which is designated as Fund B. in the Report of the Royal Commissioners, has arisen in the following way:—Money deposited by suitors in the hands of the Court of Chancery is only invested for their benefit on their express application. The floating cash balance in the hands of the Accountant-General, and not so invested at the express request of the suitor, is treated as between the suitors and the court as so much cash on a drawing account at a bankers. But as this floating cash balance has always been very large\*, the Lord Chancellor, instead of allowing the Bank of England to get the benefit of it, has, since 1793, continually kept the greater part of it invested, under the authority of acts of Parliament, for the benefit of the State. The income from these investments increased, in spite of large payments made from time to time for salaries, compensations, pensions, and the building of new courts and offices, till it amounted to 1,291,000*l.* It was then capitalised, and is the sole and exclusive property of the State, to

which no suitor has any claim, except in the remote contingency of a deficiency in realising the investments of floating cash, all of which have been made at an average of 87. Of this fund (which may be concisely described as the banker's profit, made and accumulated by the State under legislative authority, on the guarantee, and at the risk of the public, by investing the floating cash balances left at call by the suitors), it is proposed to devote one million to the building of the new courts.

"It should be added, that one member of the Royal Commission, Vice-Chancellor Wood, differed from his colleagues as to the propriety of resorting to these funds, on the ground, that as they have arisen by a banking profit made out of suitors' cash, the suitors have a moral claim upon them, so far as to require that they should only be applied for their benefit by the reduction of suitors' fees. But even if the validity of the argument be admitted, the objection is answered by the fact, that such an application would be far less advantageous than that recommended by the Royal Commissioners. The application of the million which it is proposed to devote to building the new courts, to the reduction of suitors' fees, would only save them 30,000*l.* a year. But assuming that the annual costs in Chancery are 1,200,000*l.*, the acceleration of the progress of suits only two days in the year, through the proposed concentration, would effect a saving to the suitors of more than 30,000*l.*

"3. The balance of 400,000*l.* is to be advanced out of the Consolidated Fund. This balance is to be lent by the State to the suitor at 3*l.* 5*s.* per cent; but both principal and interest are to be repaid, and the debt extinguished, by the suitors in fifty years, by means of a rent-charge, to be levied by fees on the suitors and proceedings of all courts and offices accommodated at the new buildings, except the Court of Chancery. This court is to be relieved from any rent tax, on the ground that it will have contributed a million out of Fund B. The other rent fees to be paid by the suitors of the other courts will, of course, relieve such suitors from the rent they have now to pay for offices. The redemption annuity thus created is equivalent to a fixed annual rent-charge of 18,000*l.* a year during fifty years, a sum which will be easily levied by a comparatively small rent of courts fee on the proceedings on each of the courts accommodated. For instance, the average number of writs of summons issued in the three superior courts of common law during the years 1859–60–61 was almost exactly 100,000. A fee of only 1*s.* 6*d.* on each writ—an item absolutely inappreciable in the cost of a common-law action—would produce 7500*l.* from the common-law courts alone.

"As a very considerable proportion of the expenses of the new buildings will arise from the necessity for providing an ample depository for wills, not only for London, but for the whole country, it has been suggested, that the proportion of the rent-charge paid by the Probate Court should be equal to that upon the common-law courts, namely, 7500*l.* The total number of probates and letters of administration granted in 1862 exceeded 27,000, and no doubt an average fee of 6*s.* 8*d.*, graduated according to the existing scale of probate duty, upon all probates and letters of administration above 100*l.*, would produce that amount. Of course, these figures are only given by way of suggestion, and merely to shew, that any possible rent tax which will have to be borne by the suitors would be an item of expense scarcely appreciable in comparison with the saving caused by the increased rapidity and efficiency of legislation.

"The fund called Fund B., together with other Chancery funds, is charged with the payment of large

\* It amounts at present to about 3,000,000*l.*

outgoings, and it appears, by the returns for 1863, that the income from these sources only exceeded the outgoings by 356*l.* during that year. But these outgoings, to the extent of 53,000*l.* a year, arise from the payment of certain compensation allowances in the nature of terminable annuities payable to the holders of abolished offices of the court. With reference to these compensations, the Government measure proposes to do what it is conceived is but very tardy justice to the equity suitors. The former holders of the offices were what may be called so many pensioners on the suitors, paid, not for services rendered, but for liberty to enter the court in search of justice. A patent office of this sort was in ancient days an approved method of endowing any favourite of the monarch. But as the State created these predatory offices, it should have abolished them at its own expense. Instead of so doing, it has thrown the purchase moneys, to be paid in the shape of the compensation annuities in question, on the suitors of the present generation, by way of life rent, instead of paying the whole, as it clearly should have done, out of the principal of Fund B. This injustice the Money Bill proposes to remedy. The result will, therefore, be, that after the withdrawal of the proposed million of stock, for the purposes of the intended courts, the balance of Fund B. will be applicable to the redemption of the compensation annuities, and an immediate and large reduction will be effected in the taxation of equity suitors."

### THE LORD CHANCELLOR AND THE BANKRUPTCY LAWS.

At the annual meeting of the Nottingham Chamber of Commerce, Mr. Paget, M.P., stated that a short time ago he transmitted to the Lord Chancellor a resolution adopted by the Nottingham Merchant and Traders' Association, thanking him for his efforts towards purifying the administration of the Courts of Bankruptcy. The following was his Lordship's reply:—

"Hackwood Park, Basingstoke.

"My dear Mr. Paget,—There has been no efficient superintendence of the administration of the bankruptcy law. It was the object I principally had in view when I desired to have a chief judge appointed, but which the House of Lords refused. I have endeavoured, but imperfectly, to do the duty myself.

"In doing so it is most painful to see the amount of dishonesty, neglect, and abandonment of duty which has been brought to light.

"But there is one evil in bankruptcy which I cannot reach. It is this:—As soon as a trader has made a bad debt, and the debtor becomes bankrupt, in nineteen cases out of twenty he reasons thus:—'The first loss is the best. If I look after this bankrupt's estate I shall have much trouble, and may incur great expense. I cannot leave my business to attend meetings, and it will not do to employ an attorney. If I did perhaps I should not get more than an extra shilling in the pound dividend. Therefore, let it take care of itself.' And thus every estate is abandoned to attorneys, brokers, auctioneers, and every description of unnecessary official persons, and is eaten up by their costs and charges. Then comes statements like these:—Assets, 2100*l.*; costs of solicitors and otherwise in bankruptcy, 1200*l.*—more than half the property. Then there is a great outcry, and people say this is the fault of the law and of the Lord Chancellor. I could establish a board of official administration which should be bound to collect and distribute

every estate at a maximum charge of 10*l.* or 12*l.* per cent., but were I to propose it I should have the opposition of every solicitor. How is this to be met? Will you talk to your friends on the best remedy for it, and tell me how I can secure the honest, speedy, and efficient collection and distribution of bankrupts' estates?

"Yours, very truly,

"WESTBURY.

"Mr. C. Paget."

### Court Papers.

#### EQUITY CAUSE LISTS, HILARY TERM, 1865.

\* \* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—Sh. Short.

#### Before the LORD CHANCELLOR and the LORDS JUSTICES.

##### APPEALS.

Mackintosh v. Stuart (R., Aug. 2) L. C.  
Mackintosh v. Stuart (R., Nov. 1) L. C.  
Miller v. Bush (S., Nov. 10, part heard) L. C.  
Green v. Gascoyne (K., Nov. 10, to be spoken to) L. C.  
Att.-Gen. v. Master and Co-Brethren of the Hospital of St. John the Baptist, Bedford (R., Nov. 18) L. C.  
Cornforth v. Pointon (S., Dec. 7)  
Taylor v. Meads (R., Dec. 7)  
Pelley v. Bascombe (S., Dec. 8)

Tredwell v. London, Chatham, and Dover Railway Co. (S., Dec. 10)  
Patch v. Ward (S., Dec. 15)  
Bouillon v. Burke (S., Dec. 20)  
Parkinson v. Hanbury (K., Dec. 21)  
Lautour v. Att.-Gen. S., Dec. 21)

##### CAUSES.

Baxendale v. West Midland Railway Co. (M D) L. C.  
Baxendale v. Great Western Railway Co. (M D) L. C.  
Att.-Gen. v. Chambers } (F  
Att.-Gen. v. Rees } C)

#### Before the Right Hon. the MASTER OF THE ROLLS.

##### CAUSES, &c.

Hobson v. Jones (Cause, Witnesses)  
Scott v. Oakeley (R to ans.)  
Eaton v. Bennett (D)  
Symonds v. Wilkes (F C, Summons to vary)  
Bedborough v. Bedborough (F C)  
Pullan v. Pullan (F C)  
Halliwell v. Halliwell (F C)  
Mortan v. Morant (F C)  
Catton v. Wyld (F C, Summons to vary)  
Brathwaite v. Kearns (M D)  
Pilling v. Pilling (M D)  
Bruce v. Morison (Cause)  
Clark v. Eversfield (M D)  
Ormerod v. Rostron (F C)  
Reeves v. Matthews (M D)  
Gamble v. St. Helen's Canal and Railway Co. (M D)  
Howard v. Earl of Shrewsbury (Cause)  
Chadwick v. Turner (M D)  
Pomfret v. Plucknett (M D, Ptn)  
Batchelor v. Morley (M D)  
Cheesman v. Price (M D)  
Pink v. Aburrow (M D)  
Earl of Durham v. Legard (M D)

Plucknett v. Pomfret (M D, Mtn)  
Anderson v. Anderson (M D)  
King v. Morison (Cause)  
D'Huart v. Harkness (M D)  
Oldham v. Ashwin (M D)  
Johnstone v. Blake (Cause)  
Swift v. Swift (M D)  
Killick v. Swall (M D)  
White v. Welch (M D)  
Quicke v. Floud (M D)  
Jones v. Lambert (M D)  
Sill v. Boden (Cause)  
Davis v. Davis (M D)  
Turner v. Mirfield (M D)  
Brooke v. Roberts (M D)  
Rowe v. De Lavigerie (Cause)  
Guest v. Smythe (Cause)  
Mathers v. Green (Cause, Witnesses) Jan. 16  
Moët v. Rosenberg (Cause)  
Chambers v. Crabbe (M D)  
Wood v. Scoles (M D)  
Hudson v. Phillips (M D)  
Vigor v. Salmon (F C)  
Gatayes v. Flather (M D)  
Whitlow v. Dawson (F C, Summons to vary)  
Ellis v. Griffith (M D)  
Holme v. Williamson (F C)  
Lloyd v. How (M D)

Worthington v. Beckitt (M D)  
 Payne v. Hallstone (M D)  
 Milner v. Milner (M D)  
 Boothby v. Day (M D)  
 Sheward v. Benbow (M D)  
 Bruce v. Frankum (F C)  
 Sercombe v. Sanders (M D)  
 Taylor v. Ware (M D)  
 Kingsmill v. Mogg (M D)  
 Thomas v. Chorley (M D)  
 Tidswell v. Tidswell (M D)  
 Willis v. Willis (M D)  
 Gedney v. Smith (Cause)  
 Cunliffe v. Baker (M D)  
 Shorey v. Hayward (F C)  
 Pratt v. Jenner (M D)  
 Gohagan v. Barlow M D, P C  
 against deft. Coombs)  
 Hyde v. British and Foreign  
 Marine Insurance Co. (Li-  
 mited) (Cause)  
 Harrop v. Holt (F C)  
 Elmalle v. Ingram (F C)  
 Robinson v. Clarke (Cause)  
 Burke v. Rogerson (M D)  
 Dent v. Payne (Cause)  
 In re Malam's } (F C,  
 Estate } from  
 Malam v. Malam } Chamb.  
 Younge v. Cocker (M D)  
 Harris v. Nunn (M D)  
 Drew v. Lockett (F C)  
 Darlow v. Cooper (M D)  
 Combe v. Hughes (M D)  
 Heywood, Bart., v. Heywood  
 (M D)

Hird v. Pinkney (M D)  
 Hole v. Davies (M D)  
 Beavan v. Beavan (F C)  
 Eyre v. Cunliffe (Cause, P C)  
 Tanswell v. Schurrah (M D)  
 Timmis v. Steele (F C)  
 Tozer v. Count Bell (M D)  
 Lucas v. Clarke (F C)  
 White v. White (M D)  
 Frowd v. Archbutt (M D)  
 Dickinson v. Charing-cross  
 Railway Co. (M D)  
 Bendoe v. Dawson (Cause)  
 Davies v. Otto (M D)  
 Willis v. Willis (Cause)  
 Samble v. Wilson (M D)  
 Kirkham v. Muggesidge,  
 Kat. (M D)  
 In re Sidebottom } (F C,  
 Bradbury v. Cot- } from  
 terrell } Chamb.)  
 In re Cotton } (F C,  
 Bowman v. Smith } from  
 } Chamb.)  
 Smith v. Wilson (M D)  
 Bank of London v. Mugges-  
 ridge (M D)  
 Ingle v. Partridge (Cause)  
 Webster v. Donaldson (M D)  
 Butcher v. Sherwood (M D)  
 Young v. Gill (M D)  
 Conyers v. Bezesford (M D)  
 Geale v. Hockley (M D)  
 Dickson v. Adams (F C)  
 Lees v. Lees (F C)  
 Williams v. Thomas (M D)

Bell v. Wilson (Cause)

In re Taylor } (F C, from  
 Frayne v. Taylor } Chambers,  
 } Summons  
 } to vary)

Embleton v. Fogg (M D)  
 Oxenham v. Oxenham (M D)  
 Beecher v. Major (M D)  
 Patch v. Shore (F C)  
 Merriman v. Bouney (M D)

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Tee v. Bridger (Cause)  
 Field v. Ryman (M D)  
 Cokayne v. Chanter (Cause)  
 Higgins v. Lindsay (M D, and  
 Summons)  
 Hubbard v. Hubbard (Sp C)  
 Turney v. Townsend (M D)  
 Morocco Land and Trading  
 Co. v. Fry (M D)  
 Barrie v. Jenkins (Cause)  
 M'Intosh v. Great Western  
 Railway Co. (F C) S O  
 Daffies v. Smith (F C, and  
 Summons)  
 Walford v. Gray (Cause)  
 Clark v. Levens (M D)  
 Bacon v. Clarke (M D)  
 Bayley v. Williams (Cause)  
 Tillyard v. Franco (M D)  
 Swanston v. Smethurst (Can.)  
 Beins v. Cox (M D)  
 South Metropolitan District  
 School v. Banstead and  
 Epsom Downs Railway Co.  
 (M D)  
 Dabbs v. Nugent (M D)  
 Greenfield v. Edwards (M D)  
 Hodson v. Hodson (M D)  
 In re Hall } (F C)  
 Robinson v. Latham }  
 Dobie v. Moulton (M D)  
 Bayley Worthington v. Wil-  
 hamson (M D)  
 Watlington v. Gammie (M D)  
 Brown v. Haddleigh Gas Con-  
 sumers Co. (Cause)  
 Dover v. Buck (Cause)  
 Langdon v. Blake (M D)  
 Burrows v. Langley (Cause)  
 De la Fontaine v. Coppage  
 (M D)  
 James v. James (M D)  
 In re Brabyn } (F C, from  
 Brabyn v. Brabyn } chamb.)  
 Cnet v. Middleton (F C, Ptn)  
 Stonehouse v. Dobing (F C)  
 M'Lellan v. St. George's Har-  
 bour Co. (M D)  
 Williams v. Wilson (Sp C.)  
 Eaton v. Att.-Gen. (F C)  
 Fray v. Drew (Cause)  
 Brideoake v. Lees (M D)  
 Phillips v. Wilbraham (M D)  
 Forrest v. Forrest (Cause)  
 Seddy v. Searle (F C)  
 Jones v. Dixon (F C, Sum.)  
 Cox v. Reid (F C, Sum.)  
 Boulter v. Clark (M D)  
 Austin v. Cantle (F C)  
 Fowler v. Haynes (Cause)  
 Forman v. Harvey (F C)  
 Cooke v. Benbow (F C, Sum.)  
 Joseph v. Metropolitan Rail-  
 way Co. (M D)  
 Williamson v. Shinton (M D)  
 Hunter v. General Co. of Ita-  
 lian Irrigation Canals (Ca-  
 vour Canal) (M D)  
 Parker v. Lee (M D)  
 Taylor v. Kay (M D)

Willoughby v. Brideoake (M  
 D)  
 Hall v. Waterhouse (M D)  
 Neve v. Cust (F C)  
 Stanhope v. Earl of Harring-  
 ton (M D)  
 Smith v. Thomas (M D)  
 Yardley v. Broughton (M D)  
 Symonds v. Cressy (F C)  
 Edwards Wood v. Baldwin  
 (F C)  
 Ensley v. Ensley (M D)  
 Croft v. Graham (F C, Sum.)  
 Davey v. Wietlesbach (M D)  
 In re Stubb's Estate } (F C)  
 Stubbs v. Marsh }  
 Rayson v. Watson (F C)  
 Warland v. Gooby (M D)  
 Wood v. Wadham (M D)  
 King v. Brown (M D)  
 Bawley v. Skerington (M D)  
 Upperton v. Upperton (M D)  
 Rhodes v. Bates (Cause)  
 Garrett v. Adams (Cause, P C)  
 Jones v. Griffith (M D)  
 Ludgater v. Horley (Cause)  
 Rapley v. Holbrook (M D)  
 Haig v. Gwyther (M D)  
 Welch v. Phillips (M D)  
 Fowler v. Druce (Cause)  
 Thomas v. Cross (F C)  
 Beynon v. Morris (M D)  
 Martyn v. Parnell (Cause)  
 Williams v. Caslon (M D)  
 Jenkins v. Parry (Cause)  
 Lingen v. Jones (F C)  
 John v. Lloyd (M D)  
 Oliver v. Hughes (Cause)  
 Paul v. Buggs (Cause)  
 Maughan v. Larchin (M D)  
 Wormald v. Maitland (Cause)  
 Foster v. Oxenham (M D)  
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 Daniel v. Towne (M D)  
 Wriford v. Glubb (M D)  
 Cooper v. Hambrook (M D)  
 Petheram v. Taylor (Cause)  
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 and South Coast Railway  
 Co. (M D)  
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Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Williams v. Wil- } (Cause wit-  
 liams } nesses to be  
 Williams v. Wil- } cross-exd.)  
 liams } Jan. 16  
 Smart v. Hawksworth (M D)  
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 heard)  
 Gant v. Heales (M D, part  
 heard)  
 Earl of Eglington v. Lamb,  
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 Earl of Eglington v. Lamb,  
 Bart. (M D)  
 Jenkins v. Lemon (Cause,  
 Witnesses)  
 Oakden v. Pike (M D)  
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 Copper Mining Co. (Cause,  
 part heard)  
 Gillett v. Gane (M D)  
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 Petch v. Cutts (Cause)  
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 London Monetary Advance,  
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 (Cause, P C)  
 Hosken v. Sincok (M D)  
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 Marquis of Downshire v.  
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 Shanks v. Dickinson (M D)  
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 D)  
 Chapman v. Finch (M D)  
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 Dixon (M D)  
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Before the Vice-Chancellor Sir W. P. Wood.

CAUSES, &c.

Stepson v. Brown (M D)  
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 witnesses to be cross-ex. }  
 Same v. Same (M D)  
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 George v. Tunstall (M D)  
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 P C)  
 Cooper v. Ricardo (Cause,  
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 Hooper v. Gunn (Cause)  
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 Kay v. Barlow (Sp C)  
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 Stepney v. Biddulph (Cause)  
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 Works (M D)  
 Peacock v. Peacock (M D)  
 Fenton v. Fenton (M D)  
 Godfrey v. Brooke (M D)  
 Holmes v. Bridge (F C)

Catlow v. Catlow (F C)  
 Sargent v. Coates (Cause)  
 Spokes v. Banbury Local  
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 Burton v. Shaw (Cause)  
 Treacy v. Dolman (M D)  
 Glitsenstein v. Adams (M D)  
 Smith v. Lewis (M D)  
 De Martana v. De Martana  
 (M D)  
 Mostyn v. Mostyn (F C)  
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 Proud v. Bates (Cause)  
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 (M D)  
 Finch v. Burden (M D)  
 Savin v. Oawestry and New-  
 town Railway Co. (M D)  
 Tucker v. Burrow (Cause)  
 Searby v. Tottenham & Hamp-  
 stead Junction Railway Co.  
 (M D)  
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 Cox v. Emery (M D)  
 Gray v. Price (M D)  
 Harrison v. Taylor (M D)  
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 Lakin v. Lakin (M D)  
 Whitehouse v. Kendrick (M  
 D)  
 Eastlake, Knt., v. Eastlake  
 (M D)  
 Wriford v. Wriford (M D)  
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 Great Western Deep Coal Co.  
 (Limited) v. Gould (M D)  
 Morton v. Elliott (F C)  
 Rabbetts v. Woodward (M D)  
 Tate v. Williamson (M D)  
 Davenport v. Goldberg (M D)  
 Davenport v. Phillips (M D)  
 Horsey v. Mott (M D)  
 Tristram v. Winter (M D)  
 Wilkinson v. Wilkinson (M D)  
 Hambury v. Wood (M D)  
 Davis v. Shepherd (M D)  
 Grainger v. Wright (Cause)  
 Tribute v. Rose (M D).

At Marlborough-street, Mr. Tyrwhitt gave his judgment in the proceedings against Mr. Strange, of the Alhambra, for a breach of the Theatres Act, by representing ballets on the stage.

Mr. Poland appeared for Mr. Strange, and Mr. Roberts attended for the plaintiffs, Mr. H. Wigan and others.

Mr. Tyrwhitt said—I have considered the evidence, with the statutes and decided cases. The summons charges an offence against the Theatres Act, 6 & 7 Vict. c. 68, s. 2, in keeping the Alhambra, a place of public resort, for the public performance of "stage-plays," without the license of the Lord Chamberlain. And by sect. 23 the word "stage-play" includes, among other dramatic representations, "pantomime or other entertainment of the stage," all of them being illegal in the metropolis without the Lord Chamberlain's license. Now, the Alhambra is admitted to be a place of public resort, unlicensed by the Lord Chamberlain, but licensed for music and dancing by the county justices, under the 25 Geo. 2, c. 36. The facts relied on to support the charge are shortly these:—At the Alhambra, a place of entertainment and refreshment, a stage is fitted up, with all the usual adjuncts of a regular theatre, viz. places for receiving various charges for admission, a tableau curtain, footlights, and orchestra, set and side scenes, with drops and flies. There are also boxes, called balconies, for spectators, but what would be the pit in a theatre is here appropriated to tables for persons taking refreshments. The performance in question began with the descent of some forty to sixty women, draped in the theatrical costume of ballet dancers, from some high rocks built up at the back of the stage. They came down by a winding path, along what was said, and not denied, to be a real stream of water, to the stage. Some had wands, and others palm branches, and others daggers. Some remained grouped on the rocks, but the greater part danced on the stage to the music of a full orchestra, performing the evolutions of a ballet, stated to have been produced some time before in a pantomime at Drury-lane Theatre. But the serious business or incident represented by action seems to have been the attack of some imaginary enemy, who seemed to be put to death by some of the daggers on the floor. Mr. Donne, an experienced inspector of theatres, from the Lord Chamberlain's office, described the action as being pantomime accompanied by dancing, and thought that a story, though a vague one, was acted; that there was an engagement, and some resistance, then some expression of triumph, and in the end a reconciliation brought about by the chief dancer. The whole scene seems to have taken up from half to three-quarters of an hour. As it appeared only to comprise one act, the artistes who were examined styled it a ballet divertissement, agreeing, however, that this last could only be represented as such on a stage, with all theatrical accessories, and could in no case exist without pantomime—viz. pantomimic action. In this last tenet Mr. Donne agreed. The artists also said that ballets were composed, and that these compositions—viz. the directions for setting them on the stage, could be put in writing, so as to send a copy to the Lord Chamberlain, under sect. 12 of the Theatres Act, 6 Vict., as, I apprehend, the acknowledged pantomime is or may be sent. It seems to be agreed on all hands that pantomime is the expression of feeling or incident by gestures without words, and it is difficult to see how diversifying or mixing up pantomime with another sort of wordless action—dancing—makes incident expressed without words less pantomime than if exhibited without the dancing; and, after much consideration of this slippery subject, I think that on these facts pantomime was the core



and gist of the performance, while the dancing was merely a graceful accessory or relief to it. Now, as to the law, I must take it that pantomime, as above described, existed in all time, or, at all events, in the 10 Geo. 2 and the 25 Geo. 2, the years 1737 and 1751, though not mentioned in either of the acts, 10 Geo. 2, c. 28, and 25 Geo. 2, c. 36. It is very possible that the only dancing contemplated by the Legislature in the 25 Geo. 2, c. 36, was dancing by the visitors of the public places to which licenses for music and dancing were to be granted, and did not contemplate the exhibition of hired dancers there, much less that of pantomimic action by any one. However that may be, the Theatres Act, 6 Vict., on which the summons proceeds, does include "pantomime" in the catalogue of those stage-plays which in London and Westminster are illegal without the Lord Chamberlain's license; then this last enactment extends expressly the necessity for such license to a performance which might, perhaps, have been before untouched by the 10 Geo. 2 or the 25 Geo. 2, unless reached by the words "other entertainment of the stage," in the 10 Geo. 2, c. 28, s. 2, or the words "other public entertainment of the like kind," in the 25 Geo. 2, c. 36, s. 2—namely, those of a like kind with dancing and music only. This brings me to the remaining question, whether, supposing this public dancing by hired artists had not been accompanied by palpable pantomime, it was an "entertainment of the stage," for which, since the 6 Vict., if taking place in the metropolis, a Lord Chamberlain's license was required? And it seems to me, that dancing in this place of public resort by hired dancers in theatrical dresses, on a stage fitted up with the music, lights, and scenery used for performing ballets at a theatre, cannot be less "an entertainment of the stage," because such dancing in fancy dresses in a private house would not be such an entertainment. Let us observe the subjects comprised in the 10 Geo. 2, c. 28, s. 2. They are "interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage." Those in the 25 Geo. 2, c. 36, s. 2, are "public dancing, music, or other public entertainment of the like kind." Those in the 6 Vict. c. 68, s. 2, the Theatres Act, are "tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, and other entertainments of the stage" (the same words which occur in the 10 Geo. 2). Now, according to *Rez v. Handy* (6 T. R. 286), tumbling and fencing are not within these latter words in the 10 Geo. 2; and Lord Kenyon there reviewed his decision in *Gallini v. Laborie* (5 T. R. 242), in which he had, inter alia, declared public dancing to be an "entertainment of the stage," within the 10 Geo. 2. He said, that if he had stated in *Gallini v. Laborie* that these words extended to every species of stage entertainments—e. g. tumbling or fencing—he was mistaken. But in that close review of *Gallini v. Laborie* within so short a time after it occurred, he does not recall his opinion. Whether Lord Kenyon, in *Gallini v. Laborie*, was considering public dancing taken simpliciter, under the 25 Geo. 2, or public dancing on a stage at the Opera House in a ballet, accompanied by pantomime action, he was dealing with hired dancing accompanied by theatrical adjuncts, and in so dealing spoke of it as an "entertainment of the stage." *Gallini v. Laborie* was canvassed in *De Bagnis v. Armistead* (10 Bing. 107), without disapproval. I have minutely examined the above cases cited at the hearing, because the argument that the words "entertainment of the stage," as following tragedy, &c., in the 6 Vict., are said not to apply unless ejusdem generis with the preceding words, including pantomime, and the original case on the subject. *The Archbishop of Canterbury's case* (2 Rep. 46), with *Sandiman v. Breach* (7 B. & Cr. 96), and *Es*

*parte Hill* (3 Car. & P. 225), were cited. Lord Kenyon's dictum shows that the general words "entertainment of the stage," in the 10 Geo. 2, were, in his opinion, ejusdem generis with interlude, tragedy, &c., there preceding them, and which words reappear under similar collocation in the 6 Vict. Lawyers have always held his opinion in great respect, and I entirely concur with it. I also take it that the general purview of the Theatres Act (6 Vict.) was to impose stricter licensing requisites on dramatic exhibitions in places of public resort, and to confine public performances of a kind usually represented at theatres to theatres licensed as such in town and country. This view seems sanctioned, as to the rule of construction of ejusdem generis, by the late case of *Doggett v. Cattermole* (2 Just. P. 818-824). The Court of Common Pleas then considered the Betting Act (16 & 17 Vict. c. 119), and seem to have regarded the primary object of that act in construing and giving general effect to general words following particular words in a statute. On the whole, I hold the exhibition in question to have so far partaken of pantomime as to come within that word in the Theatres Act; and also, that if it had not so partaken, it was still, under all circumstances, an entertainment of the stage within that act. I convict the defendant in a mitigated penalty of 3*l.* 1*s.*, and with the less reluctance, as he has an opportunity of reversing my decision on appeal to the quarter sessions. I do not think it is a case for costs.

Sureties were tendered and taken for the purpose of the appeal.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.—The fifth meeting of the Department of Jurisprudence and Amendment of the Law will be held at 1, Adam-street, Adelphi, on Monday next, the 16th inst., when a report will be presented from the standing committee of the department, on Dr. Waddilove's paper, "On the Amendment of the Law of Evidence." A paper will also be read by the Rev. Nash Stevenson, M. A., "On the Probate and Succession Duty levied on Property left under General Power of Appointment." Sir Fitzroy Kelly, Q. C., M. P., will take the chair at eight o'clock.

MINUTES OF THE LAST MEETING.—*Monday, Dec. 19, 1864.*—The Hon. George Denman, Q. C., M. P., in the chair. The minutes of the last meeting were read and confirmed. Mr. Serjeant Pulling read a paper, intitled "A Proposal for amending the Laws affecting Jurymen." A discussion took place, in which Mr. Edgar, Mr. Clark, and Mr. Hall took part. It was moved by Mr. Daniel, Q. C., and seconded by Sir J. Eardley Wilmot, Bart., "that Mr. Serjeant Pulling's paper be received, and printed and circulated among the members." A further discussion followed, in which Mr. F. Hill, Mr. Teulon, Mr. Dunn, Mr. Rew, the Chairman, and Mr. Burch-Rosher took part; after which the motion was put and carried.

ADMISSION OF ATTORNEYS.—There are 134 applications for admission during the present term, besides 70 renewed applications and for readmission. The number of attorneys on the roll is about 10,000.

LIABILITY OF BANK DIRECTORS.—A case of great interest to joint-stock banks in Scotland has occupied the attention of the Lord President of the Court of Session and a jury, at Edinburgh, for several days past. A Mr. Addie, who had taken shares in the now defunct "Great Western Bank" of Glasgow, and had paid up several calls, brought an action against the liquidators for recovery of all the moneys he had paid, on the ground that he had been induced to take the shares and pay the calls by the false and fraudulent reports as to the state of the bank put forth from time



to time by the directors and their manager, which was resisted on the ground that he was not entitled in point of law to recover on such grounds; or that, if he were, he had barred his claim by his subsequent conduct. The Lord Advocate was engaged for the pursuer, and the Solicitor-General for Scotland for the liquidators. A great many witnesses were examined, and the inner history of the bank was traced out almost from its commencement to the hour of its stepping up, and his finding was objected to, of course, on opposite grounds, by both parties. The jury, after deliberating three quarters of an hour, returned a verdict for the pursuer, thus entitling him to recover, including interest, the sum of 35,561*l.* 10*s.* 11*d.*

**A SOLICITOR RECEIVING A STOLEN WATCH AS A FEE.**—At the Liverpool Police Court on Tuesday, a man named Thomas James, was charged with being concerned, with his brother, in robbing a Mrs. Johnson, in December last, of a silver watch and several other articles. James's brother was apprehended and sent for trial to the sessions, but the present prisoner, desirous of having counsel for his brother, employed Mr. Brown, an attorney, to whom he gave a silver watch as a fee. This proved to be the watch stolen from Mrs. Johnson, who, on learning that Mr. Brown had the watch, applied to him for it. He refused unless paid his fee. These facts transpired during the hearing of the charge against James on Tuesday, but on an explanation from Mr. Brown, and on the payment of his fee, the watch was given up. James, however, was fined 5*l.*, or in default two months' imprisonment.

**DEATH OF THE JUDGE OF THE BIRMINGHAM COUNTY COURT.**—We regret to have to announce the death of Mr. William Nichols, the Judge of the Birmingham County Court. Mr. Nichols was appointed in October, 1862, to the judgeship, vacant by the death of Mr. Trafford, who had held the office for a considerable time. About the middle of last year he was ailing, and in September—at the end of the Long Vacation—he appointed Mr. Humphreys, of the Chancery bar, as his deputy, and went to Mentone, in Savoy, hoping that, by spending the winter in a warmer climate, he might come in the spring of the present year with renewed strength to his duties. He has written frequently to friends in Birmingham, and of late his letters have had a more hopeful tone. He suffered from dropsy, and no danger was apprehended until a few days before his death, when the disease assumed a more serious form, and he sank rapidly, and died on the 29th December.—*Birmingham Post.*

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## THE JURIST.

LONDON, JANUARY 21, 1865.

ALTHOUGH the number of the acts passed in the last session of Parliament is not very great, yet some of them are of sufficient importance to warrant us in briefly alluding to them, and pointing out their existence, for the benefit of such of our country readers as may have accidentally overlooked them.

The act which is of most general application, and therefore deserves the most prominent position, is cap. 112, which amends the law relating to future judgments, statutes, and recognisances. After reciting that it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, &c., this statute provides, that no judgment, statute, or recognisance to be entered up after the 29th July, 1864, shall affect any land, of whatever tenure, until such land shall have been actually delivered in execution by virtue of a writ of elegit, or other lawful authority, in pursuance of such judgment, &c. Definitions of "judgment," "land," and "debtor," are given; registration of the writ or process of execution is ordered, which registration is to be in the name of the debtor, and not of the creditor (as is ordered by the 23 & 24 Vict. c. 38), and need contain no reference to any prior registration of the judgment, &c.; power is given to the creditor to whom the land has been so actually delivered to petition the Court of Chancery for a sale, whereupon the Court is to make inquiries as to the debtor's interest and title, and follow, as far as possible, the practice with respect to sales of real estates of deceased persons for the payment of debts; and it is provided, that notice of the order of sale shall be given to all persons who appear to have charges on the land, and who may then attend the proceedings; and that all persons claiming any interest in the land through or under the debtor, by any means subsequent to the delivery of the land in execution, shall be bound by the order of sale and other proceedings.

The two acts which most deserve our attention are, perhaps, caps. 95 and 44—the one amending the 9 & 10 Vict. c. 93 (as to the compensation of the families of persons killed by accident), by providing, that if there be no executor or administrator of the person deceased, or if there be no action brought within six months of the death by the executor or administrator, then the persons for whose benefit such action would have been brought may bring an action in the names or name of all or any of them; and by further providing, that in such action the defendant may pay into court a lump sum, as compensation to all persons, and be entitled to a verdict if it be sufficient: the other enacting, that when a wife has obtained an order protecting her earnings and property under the 20 & 21 Vict. c. 85, s. 21, the husband, and any creditor or other persons claiming through him, may apply for its discharge; that such application may in all cases be to the Divorce Court, but that if a police magis-

trate granted the order, the application may be to him or his successor; if the justices in petty sessions did so, then the application may be to any subsequent petty sessions.

Parochial law has been considerably altered by a couple of statutes relating respectively to the assessment of poor rates, and the formation of districts for the repair of highways. Cap. 39, "The Union Assessment Committee Act, 1864," amends the analogous act of 1862, and enacts, that no person shall appeal to sessions against a poor rate, unless he gives to the assessment committee a specified notice of his objection to the valuation list, and fails to obtain relief from them; that the committee may appear in the appeal, and that their costs, if not recovered from the appellants, shall fall on the union fund, unless the Court orders them to be paid by the parish; and it also contains provisions as to the "valuation" notices to railways, &c. of the sums at which they are assessed, the non-disqualification of justices, certain expenses of the overseers, the borrowing of money, the duties of the clerk of the committee, the making of maps, and penalties on overseers. And cap. 101, "The Highway Act, 1864," most materially amends the act of 1862, as to the same subject-matter, but is of such length as to preclude any sketch within the space we can afford.

The administration of justice has been affected by three statutes. The first, viz. cap. 47, relates to the punishment of penal servitude, and makes five years the least term that can be awarded, except where there has been a previous conviction for felony, in which case seven years is to be the minimum; and it also gives power to certain justices to award corporeal punishment to convicts for offences during their confinement; contains provisions as to ticket-of-leave men reporting themselves to the police, and to the production and the forfeiture of their tickets; and the effects of such forfeiture, or committal of offences by convicts when out on such leave. The second, viz. cap. 110, prohibits justices from mitigating penalties contained in a public statute by virtue of any powers given by a local or private one. And the third, viz. cap. 115, extends the statute relating to poisoned grain, by making it penal to place poisoned flesh upon any land, except in the case of an occupier of a dwelling-house or other building, or owner of certain specified ricks, who may place poison for the destruction of vermin in such dwelling-house or building, or in any inclosed garden attached to such dwelling-house, or in the drains connected with such dwelling-house (protected so as to prevent dogs entering), or within such ricks.

The railway companies have been favoured with two statutes to enlarge their powers, without going again through the expense of a private bill; the one (cap. 120) intitled "The Railways Companies Powers Act, 1864;" the other (cap. 121) "The Railways Construction Facilities Act, 1864."

Cap. 114, "The Improvement of Land Act, 1864," now substituted for the 12 & 13 Vict. c. 100, is also of very great general importance, providing (as it does) a machinery by which landowners may borrow money

for certain improvements, and make it a charge on the land, notwithstanding their estate be a limited one.

And, perhaps, cap. 19, which enables joint-stock companies, carrying on business in foreign countries, to have official seals to be used in such countries, may be considered of sufficient general interest to be mentioned especially.

Statutes have also been passed relating to certain banking copartnerships, the factory acts, the testing of chain cables, charity inrolments, chimney sweeps, corn accounts, customs, stamps, &c., government annuities, insane prisoners, malt for feeding purposes, metrical weights and measures, burials, the superannuation of poor-law officers, the warehousing of spirits, and military and naval affairs; besides many others to which, for general purposes, it is not necessary to allude.

It thus appears, that although Parliament has been accused of having failed to achieve anything during last session, it did not separate without passing several important statutes; that others of even more importance were not passed, was due to the extraordinary delay in bringing in the bills; but of these we shall, no doubt, hear more during the approaching session.

#### LAW REPORTING.

WE understand that the scheme of the Bar Committee has been under the consideration of the Benchers of Lincoln's-inn, and that they have passed a resolution expressive of their willingness to concur with the other Inns of Court in giving the guarantee mentioned in the fourth rule of the scheme recommended by the committee in their report, and in the event of the other Inns concurring, to appoint two members of the council proposed by the first rule of the scheme.

We believe that Lord St. Leonards and Sir W. P. Wood, V. C., approve of and support the scheme as a whole, and that the resolution we have mentioned was adopted almost unanimously.

The following letters to the Attorney-General from the President of the Incorporated Law Society, will shew that the scheme also has the approval of that influential body:—

“(No. 1).

“Incorporated Law Society,  
Chancery-lane, Dec. 24, 1864.

“Sir,—I had the honour on the 17th instant to acknowledge the receipt of your letter expressing a hope that the Council of this Society would approve and further the objects of the scheme embodied in the report of the Bar Committee on the subject of Law Reporting, which has been adopted at a general meeting of the Bar held on the 28th ult.

“Your letter and the accompanying print of the report and scheme have been submitted to the Council, and I am requested by them to signify to you their approval of the objects and general principles of the scheme as embodied in the report, and their willingness to further them.

“The Council, however, direct me to state, that as they find the scheme comprises many matters of detail which appear to be important to its ultimate success, and as careful inquiry into the financial branch of the subject will better enable the Council to take

effectual steps to promote the objects of the scheme on the part of solicitors generally, they are desirous of giving the matter further consideration.

“The Council hope very shortly to be able to communicate to you the course they determine to adopt.

“I have the honour to be, Sir,

“Your very obedient servant,

“E. S. BAILEY, President.

“To the Attorney-General, &c.”

“(No. 2).

“Incorporated Law Society,  
Chancery-lane, Jan. 7, 1865.

“Sir,—On the 24th December last I had the honour to address a letter to you, signifying on the part of the Council of this Society, their approval of the objects and general principles of the scheme embodied in the report of the Bar Committee on the subject of Law Reporting. At the same time, I intimated that the Council were desirous of giving the financial branch of the scheme further consideration.

“I am now requested to inform you, that after discussing that subject very fully, the Council adhere to their approval of the scheme, as expressed in my former letter, and are prepared to nominate two members of their own body to act on the proposed council, under whose management and control it is suggested that the various Law Reports recommended by the Bar Committee shall be placed; and will make the nomination on being informed that the time has arrived for doing so.

“The Council do not, however, think it necessary or desirable to communicate in the meantime with the members of this society or solicitors generally on the subject. Such a communication appears to fall within the functions of the intended Council on Law Reporting, which will be able more effectually than the Council I have the honour to represent, to bring the proposed undertaking under the notice of the Profession, in the shape most likely to insure its ultimate success.

“I have the honour to be, Sir,

“Your very obedient servant,

“E. S. BAILEY, President.

“To the Attorney-General, &c.”

#### REPORT FROM THE SELECT COMMITTEE ON JUDGMENTS, &c. LAW AMENDMENT BILL, JUNE 17, 1864<sup>a</sup>.

THE Select Committee to whom the Judgments, &c. Law Amendment Bill was referred, and who were empowered to report their observations to the House, have agreed to the following Report:—

In presenting their Report, the committee are desirous of stating shortly the nature of the materials from which they have been enabled to form their conclusions.

The committee have had the advantage of the attendance, for examination, of several of the most eminent solicitors in London and the provinces, including members of the Council of the Incorporated Law Society, the President of the Law Society of Liverpool, the late President of the Law Society of Manchester, and other gentlemen of experience and reputation in both branches of the legal profession. The

<sup>a</sup> The members of the committee were Mr. Hadfield, Mr. Attorney-General, Mr. Selwyn, Mr. Hankey, Mr. Alderman Salomons, Mr. Henley, Mr. M'Mahon, Mr. John Joseph Powell (Gloucester city), Mr. Locke King, Mr. Joseph Ewart, Mr. Humberston, Mr. Hodgkinson, Mr. Steel, Mr. Murray, and Mr. Mellins.

evidence is printed in extenso, and annexed to this Report.

The committee have also been favoured by the Incorporated Law Society with a valuable paper on the subject touched upon by the bill, in which the history and working of the existing system is stated in detail, the legal and practical anomalies pointed out, and suggestions made for its amendment. This paper will be found in the Appendix.

Returns have also been furnished from the Common Pleas Registry Office and the Registry Offices of the county of York, shewing the number of judgments that have been registered and re-registered therein from the 23rd July, 1860 (the date of the last act relating to judgments), down to the 31st March, 1864, together with the sums of money (within limits) thereby recovered or secured.

These returns will also be found in a tabular form in the Appendix.

The committee further report, that the bill which has been referred to them has been supported by petitions from the Metropolitan and Provincial Law Society, the several Law Societies of Liverpool, Birmingham, Newcastle-on-Tyne, and Manchester, as well as by a numerous body of solicitors of Chester. No petition or other memorial has been presented against the bill.

The modes in which a judgment, at the present day, operates upon the land of the judgment debtor, are three in number:—

1. If the debtor's interest be leasehold merely, the creditor may have the land sold by the sheriff, under the common-law writ of fieri facias, the writ by which goods and chattels are taken in execution. The operation of the fieri facias, however, does not in this country extend to estates for life, or any other freehold interest.

2. Whether the debtor's interest be freehold or leasehold, the creditor may avail himself of the statutory remedy by elegit, whereby he may now have the whole of the debtor's lands delivered to him, and hold them till he has satisfied his debt by receipt of the rents and profits.

3. A judgment duly registered and re-registered creates an equitable charge on the land, which, at the end of twelve months from the date of the entering up of the judgment, may be enforced by instituting a suit in Chancery, and obtaining a decree for a sale.

To the precautions of registration and re-registration, a third has been added by a recent act, and no judgment entered up after the 23rd July, 1860, affects any lands in the hands of purchasers or mortgagees, whether with or without notice of the judgment, unless a writ of execution has been issued and registered before the conveyance or mortgage was executed, and also execution put in force within three calendar months from the date of registration of such writ.

In estimating the merits of the present system, by which registered judgments now constitute a charge upon land, at least for the period of three months, the committee desire, first, to direct attention to the expense and inconvenience with which that system is attended. They then propose to consider how far the maintenance of the present system is advantageous to the various classes of persons affected by it; and, lastly, to shew the extent to which the evils now so widely felt will be remedied by the present bill, or any other more general measure.

The expense occasioned by the present system arises from a threefold source. First, there is the expense of registering the judgment, which falls, at all events in the first instance, on the creditor; secondly, there is the expense of getting rid of the judgment whenever a judgment debtor, having a large estate, wishes

to sell any portion, however small; and, thirdly, there is the expense incurred by the purchaser or mortgagee in searching the register.

The first of these expenses, that of registering the judgment, is always of trifling amount; and if the creditor thereby betters his security, it is not one of which he has any right to complain. The same remark applies in part to the second expense, viz. that incurred by the judgment debtor in procuring a partial release of the judgment. But the peculiar operation of the judgment, in creating a lien on all the lands of the debtor, renders this release a very troublesome process. By the technical rule of law, a judgment cannot be released, even by deed, until after execution levied. The release may, perhaps, discharge the land from the equitable charge created by the 1 & 2 Vict. c. 110, s. 13; but it cannot be relied on as preventing the land from being taken in execution under sect. 11.

It is doubtful whether the act of 1860 (22 & 23 Vict. c. 35, s. 11), by which a partial release is restricted in its operation, has made any change in the law in this respect, and the result is, that the existence of the judgment is a great hindrance to the transfer of property, even where the judgment creditor is willing to waive his rights in favour of the transferee.

But the most serious expense and inconvenience is that which is incidental to the process of searching. In the Common Pleas Office, where all judgments are registered, only one fee is payable for a search against any number of names in one matter; but, of course, the solicitor's charges vary in each case with the numbers of such names and the changes of addresses of the parties. The ordinary expense of searching against a single name for judgments only, where there has been no change of residence on the part of the debtor, is between 30s. and 2*l.*; but it sometimes mounts up to a considerably larger sum, where the searches directed are numerous. If all the necessary searches are included, the average expense is not less than 5*l.* Taking the total number of conveyances in which searches are made, at a moderate computation, to be 16,000 a year, it follows that an annual cost is incurred of from 24,000*l.* to 32,000*l.* for mere searches for judgments, and of about 80,000*l.* for searches generally; and as a search is only requisite for discovering what is either concealed or unknown, this annual sum is spent merely for the purpose of ascertaining the existence of an incumbrance, of which the vendor has not given, or has not been able to give, notice to the purchaser. Even with all this expense, it does not follow that the search is effectual—and this for two reasons. It may be impossible to identify the debtor with the name upon the register. The judgment extends over a period of five years, and during that time the debtor may have frequently changed his abode. Where the name of the debtor is a common one, it is often impossible to distinguish the true object of the search, and the least doubt renders it necessary to extract all judgments against that name, which, of course, increases the trouble, if it does not increase the expense. The search may also be ineffectual, because it is not made at the last moment. A purchaser or mortgagee cannot safely complete, unless he searches up to the very hour when he advances his money. In London, this inconvenience is not so sensibly felt; but where the transaction takes place in the country, the proper course is to search up to four o'clock P.M., when the registry office closes, and then to telegraph the result, in order to complete before eleven o'clock A.M. next day, when the office opens again. In many cases even this would be impracticable, in consequence of defective means of communication.



It should be observed, that the act 23 & 24 Vict. c. 38, s. 1, prescribes a new mode of registration, and establishes a new register, viz. one for writs of execution. The act requires the writ to be registered in the name of the execution creditor, and not in that of the debtor, as in other cases; and thus, not only is a double search now necessary where a single search sufficed before, but the inconveniences are considerably increased.

In view of the difficulty with which searching is attended, it is not surprising, that in small transactions it is omitted altogether. It is not possible to ascertain with accuracy the proportion which the number of searches made bears to the number of transactions of sales and mortgages. One witness states, that every person would make a search unless the property was small, and he knew something of the party with whom he was dealing. Another witness of large experience states the average to be not more than one in ten. All agree, that the number of judgments found is very small when compared with the number of searches made; one in eight, one in ten, one in fifty, according to the greater or less magnitude of the property dealt with. Yet it is certain, that notwithstanding the smallness of the proportion of judgments found to the total number of transactions of sale and mortgage, the purchaser or mortgagee incurs risk whenever he omits to search, and that if the omission is not sanctioned by his client, the solicitor would be responsible for any loss. As the country solicitors cannot conveniently make the search in person, they employ town agents to make it for them; and these latter, in order to limit their responsibility, usually have a common form of letter which they write to their country correspondents, intimating that though they make the search, they will not be responsible for the consequences that may ensue from any oversight or omission.

The practice of issuing such a disclaimer is strong evidence of the opinion entertained by the legal profession of the risk and uncertainty which are inseparable from any search, however carefully conducted.

Notwithstanding the risk, expense, and inconvenience which have been already adverted to, it might, no doubt, be contended that it would be undesirable to disturb the present operation of judgments if they formed part of the land credit system of the country. But the committee have arrived at the conclusion that judgments are seldom or never resorted to, in the first instance, as a mode of effecting a security upon land.

An examination of the returns printed in the Appendix will shew, that of the 5610 judgments registered between the 23rd July, 1860, and the 31st March, 1864, no less than 2549, or about one-half, were for sums under 100*l.* each, that 4008, or about five-sevenths, were for sums under 300*l.* each, and that the total number above 1000*l.* each in amount, was only 658, or at the rate of 180 per annum. The inference from these statistics is, that judgments are comparatively seldom resorted to as a security for large advances.

A judgment appears to be in general entered up, in the first instance, in order to give priority out of the personal estate, and to enable the creditor to seize the *chattels* of his debtor. Where the lender of money knows the borrower to be possessed of *land*, he resorts to the ordinary security of a regular mortgage, or obtains an equitable charge, in writing, on the particular land. The effect of a judgment in charging the land, is, in fact, only incidental, and many creditors, when they obtain judgments, are quite unaware that there is any land to be attached.

When a judgment is taken as a collateral security,

it is generally resorted to on the chance of the judgment debtor becoming possessed of land hereafter, for the judgment binds after acquired property. A regular mortgage nearly always now contains a power of sale, and other facilities for realising having been afforded to the mortgagee by statute, judgments, as a collateral security, have fallen into almost complete disuse. In fact, it appears that the persons who are in the habit of lending money, and of taking judgments as security, are exactly those persons who ought to be least favoured by the law. It is stated to be not uncommon for money lenders to accept judgments in the hope of catching expectancies under family settlements or wills, and that the interest demanded on these occasions is often exorbitantly high; sometimes even reaching 50*l.* and 60*l.* per cent. per annum.

So far as landowners are concerned, the committee are of opinion that the abolition of judgments, as a means of borrowing money, would not be attended with any inconvenience whatever. A judgment, it is true, becomes a charge upon land without any previous investigation of title, and the same result may be accomplished by giving an equitable security, and that at a less expense. If a mortgage is made, the mortgagee can exercise his power of sale; but if a judgment is taken, the creditor must wait a year, and then file a bill in Chancery, and have a sale directed by the Court; and if he slumber upon his rights, he is exposed to the risk of having his lien defeated for want of re-registration of his judgment, or non-registration of his writ of execution.

For these reasons, the committee are of opinion with Mr. Christie, that landowners derive no advantage from the present system of judgments, and that they would be better without them.

But this is not a question which concerns landowners merely, or purchasers and mortgagees. It must also be regarded from the point of view of the creditor; and the committee, therefore, desire to state why they are also of opinion, that the judgment creditor has no claim to have the law maintained as it at present stands. It has been already intimated, that as between the creditor and the landowner, the equitable mortgage would serve all the purposes of a judgment, with the single exception of insuring publicity by registration. But this publicity, if an advantage to the creditor, is often attended with injury to the debtor. It is well known that there exists a society, formed for the purpose of searching and reporting all registered judgments in a table, which is called the "Commercial Compendium." The primary object of this society is, it may be assumed, the mutual protection of its members; but great and unnecessary depreciation of the credit of solvent tradesmen may be thereby occasioned; and a judgment registered for the purpose of charging the land is made a means of exposure of private affairs.

In order, however, to do justice to the creditor, his claims must also be compared with those of the purchaser or mortgagee. It must be remembered, that at present, in adjusting the relative rights of creditor and purchaser, the law makes a distinction between the effect of a judgment on personal and on real estate. It is provided by the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97, s. 1), that "no writ of *fieri facias*, or other writ of execution, and no attachment against the goods of a debtor, shall prejudice the title to such goods acquired by any person *bonâ fide*, and for valuable consideration, before the actual judgment or attachment thereof, by virtue of such writ, provided such person had not at the time when he acquired such title, notice that such writ, or any other writ, by virtue of which the goods of such owner might be seized or attached, had been delivered to and

remained unexecuted in the hands of the sheriff, under-sheriff, or coroner." That is to say, the law requires that, in order to entitle himself to the debtor's personal chattels, the creditor must actively assert his rights, and have them sold under a *fieri facias*. Is there any reason why real estate should not be put on the same footing as personal? Or if this be not practicable, from the difficulty on the score of title, which always besets the transfer of real estate, ought not the creditor, if he choose to grant time to the debtor, and to postpone suing out execution, to do so at his own risk?

Again: at present a creditor, in dealing with real estate, is in a better position than when dealing with stocks and shares. In the case of stocks or shares, a charging order must issue upon some specific interest of the debtor. The order does not extend to all a man's interest in the stocks, funds, and securities which he may possess, or in which he may have a dormant interest. So, again, a bill of sale is a bill of sale of the particular articles comprised in it. It is a lien upon specific goods and chattels. But a judgment creditor obtains a lien upon all lands, without distinction, both those already and those thereafter acquired, which is more than is obtained by an ordinary equitable mortgage. In Ireland, every judgment is required to be entered on an affidavit, stating what particular land it is to affect, and thus Irish judgments are assimilated to registered mortgages. But in England no such specification is necessary. The committee fail to see anything in the position of a judgment creditor which should entitle him to this peculiar benefit. They regard it as an abuse of the law that a man who lends money, knowing that he has got a judgment, should, by making an entry in a book kept in London, be able to force all purchasers of any of the debtor's lands, in all parts of the country, at their own peril to come and look after him, and to search to see that no incumbrance exists upon the lands *bonâ fide* contracted for. It is the duty of the vendor to disclose the judgment on the face of the abstract; and if he does not do so, he commits a fraud, for which he, and not the purchaser or mortgagee, ought to be answerable.

If the principles above stated are correct, they may be carried out, to a great extent, either by the present bill, or by extending the operation of the writ of *fieri facias*, so as to assimilate the modes of execution against real and personal estate. It has been much urged upon the committee that the latter is the more desirable alternative, as it would place the two kinds of property upon exactly the same footing. The inconvenience of putting the *elegit* in force is very considerable, and the equitable charge cannot, as already mentioned, be carried into effect till the expiration of a year. It has, accordingly, been proposed that the creditor should have power given him to force an immediate sale of his debtor's real estate. But there is some difficulty in determining how this is to be brought about. The courts of law have, at present, no adequate machinery for investigating titles like that which is possessed by the Chancery judges at chambers. If, therefore, an immediate sale took place, it would probably be better that it should be carried out under the direction of the Court of Chancery.

The other alternative by which the above principles may be enforced in practice is, by adopting the provisions of the present bill, so far as they tend in that direction.

The bill may be described as an extension of the act of 1860 (23 & 24 Vict. c. 38), in so far as it does away with the interval of three months, which that act allows, to elapse between the execution and the registration of the writ. In order to bind a purchaser or mortgagee, the bill requires that the land shall have

been actually taken in execution. The tendency of all recent enactments has been to bring about equal distribution between creditors, and to do away with the possibility of fraudulent preference. The committee are of opinion that, until the creditor has executed his judgment against the land, he ought to have lien or priority in respect of the land, just as he would have no prior claim against the debtor's personal effects till he had taken the proper steps for taking those effects in execution.

But the committee, while entirely approving of the bill as amended, feel that, if legislation were to stop here, many of the anomalies and inconveniences to be found in this department of the law would still remain untouched. Judgments are not the only means by which land is incidentally charged. The same result is also produced by Crown debts, and lites pendentes.

Many persons become sureties to the Crown without being aware that they thereby render their real estate liable; yet this liability is incurred by any obligation entered into under seal, whether ultimately matured into a judgment or not. Previously to the year 1839, the purchaser had no means of ascertaining whether such an obligation existed; but, by two enactments of the present reign, the bond must be registered and re-registered, in order that it may create a charge on the lands of the Crown debtor. The occasions which give rise to these so-called Crown debts are much more frequent than is commonly supposed, particularly in districts where excise operations are carried on. For example, wherever there is a large trade in malt, each maltster has to find two sureties to the Crown, and, the obligation being entered on the register, creates a charge on the maltster's land and the land of his sureties, which the purchaser generally requires to be removed. Though the suretyship is said to create a Crown debt, the liability under it is prospective merely, and, of course, in the majority of cases, never arises. Yet, the registered debt is not unfrequently found to be a serious hindrance to the transfer of land, and where its effect is properly understood, landowners are unwilling to become sureties, by reason of the inconvenience to which they are thereby subjected.

Even when the Crown debt has become satisfied, or the prospective liability discharged, frequently no quietus is entered up, and the debt consequently remains uncanceled in the register. This occurred in a case which has been brought under the notice of the committee, in which the Crown debtor was wholly unconscious of his liability, and the charge, not having been discovered till the last moment, might have entailed considerable difficulty and loss.

But the mischief is not confined to cases under the excise law. The Standing Orders of Parliament require that railway companies should give security for completion of intended lines of railway, so that the number of Crown debtors includes almost all railway directors. A case has been mentioned in the evidence, in which a railway director had become bound with the company, of which he was a director, for the completion of a short line, which was afterwards sold to one of the largest railway companies in the kingdom. Completion of the line having been delayed, owing to some alterations in the original scheme, the Crown debt operated as an incumbrance upon all the directors' lands for a period of several years. The debt was only discovered by the vigilance of a purchaser, who, however, consented to take the land subject to the debt, in reliance on the well-known wealth of the vendor.

The committee are of opinion that this state of things ought not to continue. They believe that a

change in the law should be made, without prejudice to the rights of the Crown to priority in the recovery of debts and excise duties. The practice of registering, against solvent debtors, the bonds of themselves and their sureties for current accounts and liabilities, which may never in fact accrue, is, in their judgment, prejudicial to the public interest, by preventing landowners from giving security to the Crown, lest they should thereby be disabled from dealing with their property. It must not be forgotten that the present law of Crown debts dates from the 33 Hen. 8, when the amount of personal estate in the kingdom was much less considerable than at present, and that the protection then thought requisite may now be more easily dispensed with. At the same time, the committee are strongly impressed with the advisability of improving the writ of extent, so as to enable the Crown to take real estate in execution. If, as has been suggested with respect to ordinary creditors, greater facilities were afforded to the Crown to recover duties and debts by seizure and sale, they believe that both the public and the Crown would be the gainers. Vendors and purchasers would not be harassed by the discovery at the last moment of a concealed charge on the land, which the Crown has omitted to put in force for want of some speedy means of realising the sum due. The Crown might still retain its preference over all other creditors; but whilst the parties are solvent, and no intention to issue execution exists, principals and sureties should have free control over their property, and bona fide purchasers be able to enjoy the protection of the law.

The observations just made in reference to Crown debts apply with equal force to *lites pendentes*. A registered *lis pendens* charges an estate, though the claim made by the plaintiff is neither ascertained or acknowledged. The charge thus created continues to hold good till the suit or action is finally disposed of, and this, in the case of Chancery proceedings of an administrative character, may not take place for several years. In the meantime persons are debarred from purchasing, from a reluctance to involve themselves in litigation. In the proceedings for winding up joint-stock companies, the law of *lis pendens* is liable to be specially abused. It is not uncommon in such cases to register *lis pendens* against the parties alleged to be shareholders, with a view to prevent their transferring their land while the contest is going on. By this ingenious device the shareholders' land is rendered unmarketable, though it is not even incidentally the subject-matter of the litigation. The committee are, of course, aware that it is no argument for a change of a system, that the system is liable to be perverted; but the practicability of such a perversion serves to shew the largeness of the area which is covered by the registered *lis*. It seems to the committee that, in the event of a further measure being brought in, the case of *lites pendentes* ought to be particularly dealt with, and that no notice of a *lis pendens* should be binding unless the particular land affected by it be specified on the face of the register.

In conclusion, the committee suggest that an early opportunity should be taken of consolidating the existing law relating to judgments, and other incidental charges on land. The statutes now in force relating to these matters amount to at least twelve in number; and in order to arrive at the rights of a purchaser without notice, the law, as it stood before the year 1837, has on each occasion to be ascertained. This can only be done by laborious study, and is throughout surrounded with doubt and difficulty. With regard to future judgments, recognisances, Crown debts, *lites pendentes*, bankruptcies, and insolvencies, the committee are of opinion that they should no longer

create a lien on the land till the land is actually taken in execution by the sheriff, coroner, or other legal authority, and that until this is done the land should be capable of sale and mortgage as effectually as purely personal estate.

The committee are also of opinion that it is deserving the consideration of Parliament, whether some more ready means cannot be devised for enabling land to be taken in execution than is at present afforded by the writs of extent or *elegit*, and that this should be done by enlarging or accelerating the legal or equitable remedies to which it is now competent to the judgment creditor to resort.

## LAW AND LAWYERS IN IRELAND.

A VERY ridiculous application—principally remarkable for the illustration which it affords us of the manners and customs of attorneys in the south of Ireland—was made to the Court of Queen's Bench on Friday last. In the town of Youghal, be it known to all intending litigants, there are two attorneys called and described by the respective names of Kildahl and Walshe. Mr. Kildahl is a young man, and Mr. Walshe middle-aged; but, notwithstanding the disparity of age, they have this in common, that both are attorneys, and both play billiards. The two were in the billiard-room on the 16th of last November. These gentlemen not only play, but bet in a free and off-hand manner, yet not without a prudent resolution to limit their wagers to sums within their means. On the evening in question, as the lawyers say, this brace of legal billiard players were betting as usual. They betted half-a-crown. With regard to the final destination of the stakes a difference of opinion arose, and it seems that, conscious of the important interests involved, there was some talk respecting "a reference to *Bell's Life on the matter*." The fate of the half-crown, it would appear, was ultimately settled without the intervention of the London sporting journal, and, as happened in the case of the incipient duel between Mr. Richard Swiveller and the infuriated market gardener, the affair ended, one may suppose, in Mr. Walshe looking at Mr. Kildahl, and in Mr. Kildahl looking at Mr. Walshe. "The affair," one is glad to find it recorded, "passed over without anything disagreeable having taken place between the parties." Subsequently, however, things took a turn for the worse. The two gentlemen named, as well as some others, were in the billiard-room, when somebody "proposed to bet one shilling on the game." The immediate result of this startling proposition is told in the report of the consequent application to the Court of Queen's Bench. Here is what followed:—"Mr. Kildahl said to Mr. Walshe, 'I will bet one shilling to stop your mouth.' Mr. Walshe, who was engaged in the play, turned round, and inquired, 'Who said that?' Mr. Kildahl said, 'I did.' Mr. Walshe remarked to him, 'I will not bet with you, or with any one that will not pay a bet.' He was about to resume the play when Mr. Kildahl gave him a kick behind, in the presence of ten or twelve gentlemen." The blue blood of the Kildahl's was on fire at once. The equally blue blood of the Walshe's ignited simultaneously. Of course, friends interfered, with earnest entreaties, beginning, "For God's sake, gentlemen," &c.; but it was of no use whatever. Mr. Walshe, as we read in the abstract of his affidavit, felt that "the remarks of Mr. Kildahl were addressed to him in a very rude and offensive manner, and that the blow, though not violent, was inflicted on him in a public room, with the view, as he believed, of inducing him there to engage in a physical encounter, to cause him to commit a

breach of the peace, or induce him to send a hostile message;" but, to Mr. Walshe's credit be it said, he nobly resisted the pugnacious suggestions of the inner man, and "soon after the occurrence" became "desirous of putting the matter into the hands of his solicitor." Friends, however, interposed. They spoke of an apology. Mr. Walshe was agreeable. They spoke of 5*l*. to be paid by Mr. Kildahl to a charitable institution. Both parties approved the suggestion; but, melancholy to relate, the amicable settlement fell through. The apology was not what it ought to be. The 5*l*. was sent in company with offensive language; and Mr. Walshe, with the feelings of a man, a solicitor, and a billiard-player, at fever heat within him, rushed into the Court of Queen's Bench for a criminal information. In the result he did not get it. Instead of this, he was courteously informed that the case was one of assault, determinable at petty sessions, and that he might thank his own tongue for what happened to him in connexion with Mr. Kildahl's foot. The Court had something else to do, it was intimated, than deal with petty affairs of the kind; so that, for the present, Mr. Walshe has appealed in vain to the outraged laws of his country.

## CAUSES MOVED IN HILARY TERM.

### COURT OF QUEEN'S BENCH.

#### NEW TRIALS.

Midd.—Austin v. Bunyard	Midd.—Foley v. East & West
—Graham v. East & West	India Dock Co.
—India Dock Co.	—North British Rubber
—Darke v. Grosvenor and	Co. (Limited) v. Manchester
West-end Railways Termi-	Rubber Co. (Limited)
nas Hotel Co. (Limited)	Lond.—Fisher v. Marsh.

#### CROWN PAPER.

Lancashire .....	Pope v. Whalley.
Middlesex .....	Reg. v. Governor of the House of Cor-
	rection, Coldbath-fields.
Devonshire .....	—Harris.
—	—Vesey.

For Wednesday, Jan. 25.

Middlesex .....	West v. Barnard & ors.
Leicestershire ..	Reg. v. Inhabitants of Ashby Poblelle (in
	Error).

### COURT OF COMMON PLEAS.

#### NEW TRIALS.

Midd.—Benham v. Batty	Lond.—Howell v. Chartered
—Deneulain v. Hodgson	Bank of Australia & China
Lond.—Tyler v. Charing-cross	—Robinson v. South-west-
Railway Co.	ern Railway Co.
—Woodward v. Wallinger	—Heard v. Holman
—Hunt v. Harris	—Rawlings v. Morgan
—Fowler v. English and	—Hirschfield v. Smith
Scotch Marine Co.	Liverp.—Crow v. Armstrong
—Mockford v. Spence	—Whitaker v. Rogers.

#### DEMURRER PAPER.

Wednesday, Jan. 18.	Cobb v. Peacock (Sp. C. by
Overseers of Sunderland v.	order)
Guardians of Sunderland	Binder v. Same (Sp. C. by
Munday Jan. 23.	order)
Walker v. Brodgen (D.)	Day v. Simpson (Ap.)
Days v. Peacock (Sp. C. by ord.)	Andrews v. Pell (D.)

### COURT OF EXCHEQUER.

#### NEW TRIALS.

Midd.—Markerow v. Piest	Lond.—Chandler v. Doulton
—Lambert v. M'Morran	Liverp.—Brown v. Accring-
—Bell v. Bull	ton Cotton-spinning Co.
Lond.—James v. Oriental Fi-	(Limited)
nancial Corporation (Li-	—Mason v. Mitchell
imited)	—Grimshaw v. Ogden
—Ridout v. Lucas	—Parkinson v. Kayberry.

#### SPECIAL PAPER.

Yarmouth Bridge Co. v. Dore	Standbridge v. Proprietors of
(Sp. C.)	the Birmingham Canal Na-
Richard v. Harper (D.)	avigation (D.)
Wakefield v. Senescal (Ap.)	Woods v. De Mattos (D.)
Gath v. Lees (D.)	Publishers of Rhyl Record v.
Boosey v. Wood (D.)	Macann (Ap.)
Campbell v. Dufaur (D.)	Mountsey v. Ismay (D.)
Standbridge v. Rabone (D.)	Morgan v. Gath (D.)

#### ERRORS AND APPEALS.

Williams v. Blackwall (Ap.)

### SITTINGS IN ERROR.

#### QUEEN'S BENCH.

Wednesday .....	Feb. 1	Friday .....	Feb. 3
Thursday .....	2	Saturday .....	4

#### COMMON PLEAS.

Monday .....

#### EXCHEQUER.

Tuesday .....

COMMISSIONER APPOINTED TO ADMINISTER OATHS AT COMMON LAW.—Nov. 23, 1864.—The judges of the Court of Queen's Bench, Common Pleas, and Exchequer have appointed George Corpe, of No. 3, Lincoln's-inn-fields, Gentleman, to be a London Commissioner for administering Oaths at Common Law in the said courts.

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.—Their Lordships will sit on Monday, and on the following Monday the Committee will resume the customary sittings. No day has been appointed for judgment in the Colenso case.

SITTINGS OF THE ARCHES COURT.—At the Arches Court, on Monday, an application was made to appoint a day for the hearing of a case which had been some time pending. The Court sits very seldom (about once during term), and it was stated that it was desirable that the matter should be disposed of. The Dean of Arches (Dr. Lushington) expressed his readiness to sit at any time required when he could do so, in reference to the Admiralty Court business. All that was required was, to arrange matters with the registrar of the Admiralty Court. At the same court two cases of disputes respecting church rates, which had also been pending some time, were advanced a stage.

THE ALLEGED IRREGULARITIES OF BANKRUPTCY OFFICIALS.—At the Nottingham Bankruptcy Court, Mr. Commissioner Sanders delivered judgment in the case of Mr. Harris, official assignee of the Birmingham District Court of Bankruptcy, at Nottingham, who was charged by Mr. Chief Registrar Miller with having kept in hand more than 100*l*. in one bankrupt's estate, or above 1000*l*. in the aggregate of estates, as the case might be, for more than one week, whereby he had become chargeable, under the 159th section of the

Bankruptcy Act of 1861, and rendered liable to a penalty of 20% per cent. on the sums so detained. Mr. Harris was also charged with using the money for his own private purposes. The learned commissioner gave a detailed account of Mr. Harris's quarterly returns from 1861 (when the new act came into operation) down to 1864. He said he had closely examined the accounts, and found that there were only two instances in which the official assignee had had in hand more than 1000*l.* on the aggregate of estates for above a week—one was on the 16th August, 1863, when there was an excess of only 1*l.* 3*s.* 10*d.*; and the other was on the 16th September, 1863, when he had in hand 27*l.* 14*s.* above the sum mentioned in the act. The first-mentioned sum was too small to be taken into consideration, and the retention of the latter sum was accounted for by the absence of Mr. Harris from home during the long vacation, for during his absence no payments could be made; but after his return the sum was reduced to its proper amount. He complained, that the conduct of Mr. Commissioner Ayrton and Mr. Commissioner Harding was too precipitate, inasmuch as they jumped at conclusions, and made statements in their report, for which they had no legal ground. Their report dealt in generalities; it stated that sums had been retained for more than seven days, contrary to the act; but it did not say when the offence was committed, nor upon what amount the 20% per cent. was to be charged. By the Bankruptcy Act of 1861, the manner of remunerating the official assignee was entirely changed. Before that time, he received fees out of which he had to defray all office expenses; but by the new act he ceased to receive fees, and was limited to a salary, free of all such expenses. No rules or orders were made under the new act, as to how the office expenses were to be paid, and Mr. Harris accordingly paid these, together with other expenses, out of money in hand received from bankrupts' estates. These payments would reduce the balance to the amounts mentioned in his cash-book. With reference to 1863*l.* 11*s.* 2*d.*, which Mr. Harding and Mr. Ayrton said the official assignee ought to return, he having received it in fees, and not entered in his accounts, the commissioner said that they had not sufficient grounds for calling upon Mr. Harris to refund it. Mr. Harris might not unreasonably suppose that he was entitled to those fees as they were from estates under the old act. The practice in the London courts under the old act was for the official assignee to receive four-fifths of the fees, and the other fifth was paid into court. This sum of 1863*l.* was made up of fees so obtained. The conduct of Mr. Chief Registrar Miller was indefensible. He had instituted a prosecution, and then withdrawn from it, in a manner by no means creditable. Having gone through all the matters connected with the charge in open court against Mr. Harris, the commissioner was of opinion that Mr. Harris must be acquitted of fraud, or any attempt to convert the public money to his private purposes. That his books were not methodically and accurately kept must be admitted, and was a subject of great regret; but it had brought its punishment with it, and the anxiety it must have occasioned throughout so lengthened an investigation would be a safe guarantee in preventing any such irregularity for the future. No order could, therefore, be made to charge him with 20% per cent. upon any sum.

**SURVIVORSHIP.**—In 1806 Mr. Mason and one son were drowned at sea; his remaining eight children went to law, some of them against the others; because if the father died before the son, 5000*l.* would be divided equally among the other eight children, whereas if the son died before the father the brothers only would get it, the sisters being shut out.—A few years

afterwards Job Taylor and his wife were lost in a ship wrecked at sea; they had not much to leave behind them, but what little there was was made less by the struggles of two sets of relatives, each striving to shew that one or other of the two hapless persons might possibly have survived the other by a few minutes.—In 1819 Major Colclough, his wife, and four children were drowned during a voyage from Bristol to Cork; the husband and wife had both made wills, and there arose a pretty picking for the lawyers in relation to the survivorships and next of kin, and trying to prove whether the husband died first, the wife first, or both together.—Two brothers, James and Charles Corbet, left Demerara on a certain day in 1828, in a vessel of which one was master and the other mate; the vessel was seen five days afterwards, but from that time no news of her fate was ever received. Their father died about a month after the vessel was last seen. The ultimate disposal of his property depended very much on the question whether he survived his two sons, or they survived him. Many curious arguments were used in court. Two or three captains stated that from August to January are hurricane months in the West Indian seas, and that the ship was very likely to have been wrecked quite early in her voyage. There were, in addition, certain relations interested in James's dying before Charles, and they urged that, if the ship was wrecked, Charles was likely to have out-lived by a little space his brother James, because he was a stronger and more experienced man. Alas for the "glorious uncertainty!" One bigwig decided that the sons survived the father, and another that the father survived the sons.—About the beginning of the present reign three persons—father, mother, and child—were drowned on a voyage from Dublin to Quebec; the husband had made a will, leaving all his property to his wife; hence arose a contest between the next of kin and the wife's relations, each catching at any small fact that would (theoretically) keep one poor soul alive a few minutes longer than the other.—About ten years ago a gentleman embarked with his wife and three children for Australia; the ship was lost soon after leaving England; the mate, the only person who was saved among the whole of the crew and passengers, deposed that he saw the hapless husband and wife locked in each other's arms at the moment when the waves closed over them. There would seem to be no question of survivorship here; yet a question really arose, for there were two wills to be proved, the terms of which would render the relatives much interested in knowing whether husband or wife did really survive the other by ever so small a portion of time.—*Dickens's All the Year Round.*

**PRIVATE BILLS IN THE HOUSE OF COMMONS.**—On Wednesday Mr. Smith and Mr. Frere, the Examiners, held their respective courts in the committee-rooms, to ascertain whether the promoters had complied with the Standing Orders of the House in respect to private bills. Mr. Smith took twelve railway bills (nine unopposed and three opposed), and Mr. Frere proceeded in the same manner with a similar number. As there are 596 private bills, the Examiners will be some time engaged in the investigation. There are 245 railway bills for England; 66 for Wales; 54 for Scotland; and 37 for Ireland. Of other private bills, on which the deposit is four per cent., there are, 37 waterworks and gas; 37 gas; 4 harbour and dock; 4 market; and 23 town improvement bills; road bills and miscellaneous make up the number. Among the bills are that of the Midland for additional powers, and the North London, Highgate, and Alexandra Park Bill.

**THE WIMBLEDON-COMMON BILL.**—We are informed that the committee who, at Earl Spencer's instance,

were appointed to consider the provisions of this bill, have presented their report to his Lordship. The report contains recommendations intended to remove objections suggested by certain of the clauses in the bill, and it is now under the consideration of his Lordship and his advisers.

#### ACTION AGAINST A RAILWAY COMPANY FOR DELAY.

—In the Manchester County Court, before Mr. E. Ovens, as judge, an action was brought by Mr. J. Heywood, publisher and newsagent, Deansgate, Manchester, against the London and North-western Railway Company, to recover 4*l.* 16*s.* 9*d.* damages for delay in the delivery of a quantity of periodicals consigned to the plaintiff from publishing houses in London. Mr. Cobbett was for the plaintiff, and Mr. Woolley (Brett & Woolley) for the company. The plaintiff was in the habit of receiving parcels from London by a goods train due in Manchester at half-past three on Thursday mornings. On the 8th December his man went to the station as usual between half-past three and four o'clock, but the train had not arrived, and, in fact, did not reach Manchester until seven o'clock, and the parcels were not delivered to the plaintiff's man until half-past seven. The periodicals comprised *Cassell's Paper*, the *Navvies' Calendar*, and other serial publications issued weekly. The result of the non-arrival of the parcels was, that the plaintiff was unable to send off several small orders to country agents with the newspapers, and they were consequently left upon his hands. In addition to these, a quantity ordered for his own retail department had remained unsold, and the total value of periodicals thus left on hand amounted to 4*l.* 16*s.* 9*d.* It appeared that the delay was occasioned by the breaking of an axle; and the judge held, that, *prima facie*, this was negligence for which the defendants were liable. They had contracted with the plaintiff and other publishers to carry parcels, which should arrive in ordinary course at half-past three. It was true that the defendants sent their men there at that early hour to deliver the parcels, but this was in consequence of a mutual arrangement, whereby the defendants were to secure this traffic on their own line. It could not be said that a delay of four hours beyond the customary time was a reasonable delay; and the judgment must, therefore, be for the plaintiff. Then, as to the damages, his Honor thought that the plaintiff had no right to recover with respect to the moiety of the unsold papers which he would have sold himself; for it was not likely that, having arrived in Manchester at half-past seven, the delay could have prevented their sale. But the case was different with respect to the periodicals that were to have been sent off with the newspapers by early trains, and which were not sent afterwards, because the quantities were so small. For these the plaintiff was entitled to recover half the amount claimed; but the value of the serials as waste paper, estimating it at 8*s.* 4*d.*, must be deducted; and he should, therefore, give judgment for 2*l.*

**RAILWAY CARRIERS IN FRANCE.**—A curious trial has taken place this week, which has settled a vexed horticultural question. It is now decided that cauliflowers are not simple cabbages. This point was determined in a case of *A Railway Company v. Importers of Salad*. The plaintiffs pleaded, that by reason of its head, a cauliflower required especial care in transit. The defendants set it up as mere cabbage, treating the head as an accident requiring no special service. If the head was broken, a *capias ad satisfaciendum*, as it might be called, would enable them to pick up the pieces, and render them serviceable. The Court, however, held, that a cauliflower was a delicate plant, ruled that it was entitled to be placed with

peas, and therefore a verdict was given in favour of the careful carriers.

**DEATH OF LADY BROUGHAM.**—Lady Brougham died at Brighton on Thursday the 12th, shortly after two o'clock. Her ladyship had been staying at that watering-place since August, and up to the Monday preceding her death was in her usual health, so much so, that she intended to leave Brighton on Monday next for Grafton-street. However, her ladyship was attacked with bronchitis, and died at the hour above named. Lady Brougham was the eldest daughter of Mr. Thomas Eden (uncle of the late Earl of Auckland and Lord Henley). The lamented lady was twice married, first to Mr. John Spalding, of Holme, N.B.; and secondly, on the 1st April, 1819, to Lord Brougham, then Mr. Henry Brougham. Her ladyship, who was in her 77th year, had issue by Lord Brougham two daughters, one born in 1820, and who died in 1821; and the Hon. Eleanor Louisa Brougham, who died in the bloom of youth in 1839. The intelligence of her ladyship's death was immediately transmitted to the noble and learned lord, who was staying at his residence at Cannes.

**OBTAINING LAW BOOKS BY FALSE PRETENCES.**—At Bow-street, on the 17th instant, Joseph Warren, a young man whose apparel, originally stylish, was becoming sadly worn and shabby, was charged with obtaining a copy of Broome's Legal Maxims, and attempting to obtain a second, from Messrs. Stevens, of 26, Bell-yard, law booksellers, by false pretences. Mr. Stevens stated, that on the 12th instant the prisoner called at his shop, and asked for a copy of Broome's Legal Maxims, for Messrs. Carington & Sons, solicitors, of Throgmorton-street. It was delivered to him, and he signed an acknowledgment in the name of Williamson. He called again last night, and asked for another copy. Suspecting that all was not right, witness desired his assistant to go with the prisoner to Throgmorton-street. John Reeves, the assistant, said he accompanied the prisoner to Throgmorton-street. He appeared very unwilling to go there, and made one or two attempts to get away, but witness would not let him. On arriving at Throgmorton-street, witness ascertained that the prisoner had formerly been in the service of Messrs. Carington & Sons, but was not now, and had no authority to obtain the books. Witness gave him into custody. He was remanded for further examination.

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## THE JURIST.

LONDON, JANUARY 28, 1866.

ONE of the main evils of profuse reporting is the encouragement it affords to the arguing and deciding of cases by reference to authorities supposed to be in point, rather than by the light of established general principles. For illustration, we may refer to the case of *Heelis, App., Blain, Resp.*, decided by the Court of Common Pleas (Erle, C. J., and Keating, J.) in November, 1864 (11 Jur., N. S., part 1, p. 18; 13 Weekly Rep. 262). The question arose upon a case stated by a revising barrister, by which it appeared that the appellant claimed to vote under the Reform Act, 2 Will. 4, c. 45, s. 26, as having been in "the actual possession" of a share of a certain rent-charge of 50*l.* for six calendar months previous to the 31st July, 1864. The rent-charge was originally created by a deed of the 10th June, 1839, and made payable at Midsummer and Christmas, and had been paid half-yearly since that time. By indenture, dated the 29th January, 1864, Stephen Heelis, in whom the rent-charge was vested, granted it to John Heelis and his heirs, to the use of the five sons of the said Stephen Heelis, their heirs and assigns for ever, as tenants in common. The first half-yearly payment which fell due after the transfer, was paid in July, 1864. It was objected, that the appellant, who was one of the five cestuis que use, did not obtain actual possession of his share until the payment in July; and the case of *Murray and Another, Apprs., Thorniley, Resp.* (2 Q. B. 217; 10 Jur. 270) was relied on. In that case, a claim to be registered in respect of the possession of a rent-charge for six months previous to the last day of July, 1845, was rested on a deed dated the 25th January, 1845, whereby a rent-charge of 6*l.* 3*s.* (not previously existing) was granted to the appellants and their heirs, to be paid on the 1st January in every year, the first payment to be made on the 1st January then next ensuing. The argument against the qualification proceeded on the well-known rule, that there is no actual seisin of a rent-charge at the common law until the owner has received some payment on account of the rent; and this, whether he claims under a grant or devise of a rent newly created, or a grant or devise of a rent previously existing. The Court held, that the words "actual possession," in the Reform Act, meant "a possession in fact, as contradistinguished from a possession in law; and that, as the possession in fact of a rent-charge must be the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it, so there could be no such possession in fact in that case, where the first payment of the rent did not become due until after the expiration of the month of July, and where nothing whatever took place but the mere execution of the deed;" and they referred to the authorities collected in Com. Dig., tit. "Seisin," (C.) and (D.), establishing the distinction between a seisin in law and a seisin in fact of a rent-charge. In *Haydon, App., Overseers of Twerton, Resp.* (4 C. B. 1), the Court of

Common Pleas held, that an assignee of an existing rent-charge did not acquire actual possession of it before he received payment. In *Heelis's case*, Mr. Joshua Williams, for the appellant, contended, that as the rent-charge was limited to his use, the Statute of Uses, 27 Hen. 8, c. 10, s. 1, gave him "the lawful seisin, estate, and possession of and in the same" rent; and he cited many authorities to shew that the statute passes the actual possession; among them, an anonymous case in Cro. Eliz. 46, or rather a note of the reporter, "that cestui que use at this day is immediately and actually seised and in possession of the land, so that he may have an assize or trespass before entry against any stranger who enters without title, and this by the words of the statute; and this was the opinion of divers justices." On the strength of these authorities, the Court decided in favour of the claim. "At common law," said Erle, C. J., "there would have been no actual possession till July; and there are two authorities for this. But this was not a conveyance at common law, but under the Statute of Uses. The stat. 27 Hen. 8, c. 10, s. 1, gives the cestui que use possession immediately on the execution of the deed creating the use. Now, the stat. 2 Will. 4, c. 45, by sect. 26, requires the claimant to be in actual possession. I think, however, that the Legislature intended the same meaning to the word 'possession' in the stat. Hen. 8, as it did to the words 'actual possession' in the 26th section of the Reform Act. Of course, any illusory act would have no operation, such as the payment of a penny for rent." [Why not? Such a payment would give the actual seisin of the rent at common law, and could not be more illusory than the merely technical juggle of limiting a use.] "The word 'possession' has always had a technical and perfectly well understood meaning among conveyancers; and we have the highest authority for giving great weight to the practice of conveyancers." According to the report in the *Weekly Reporter*, the Chief Justice remarked, that the mantle of some of the old conveyancers had descended on Mr. Williams, and the Court had had the benefit of it in the argument—a well-merited compliment—which, however, would have been more valuable if the Court had shewn a better appreciation of the learned conveyancer's argument, by exposing the fallacy that lurked in it. Mr. Williams made the best of a bad case, and obtained a judgment in his favour, but the decision was plainly erroneous. The conveyance in question was not a conveyance operating under the Statute of Uses, but a grant at common law, passing a legal seisin or title, but insufficient to pass the actual seisin or possession of the rent, which could only be obtained by the receipt of the rent, or of something in lieu of it. The words of the 1st section of the Statute of Uses are, that the person who has the "use, shall from thenceforth stand and be seised, deemed, and adjudged in lawful seisin, estate, and possession of and in the same honours, castles, manors, lands, rents, service, remainders, and hereditaments, with their appoint-

ments, to all intents, constructions, and purposes in the law, of and in such like estates as they had or shall have in use, trust, or confidence of or in the same, and that the estate, title, right, and possession that was in such person or persons that were or hereafter shall be seized of any lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, be from thenceforth clearly deemed and adjudged to be in him or them that have, or hereafter shall have, such use, confidence, or trust after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them." Nothing can be plainer from these words, than that the estate and possession which are transferred to the cestui que use are the estate and possession, or part of the estate and possession, which are in the grantee to use, and cannot exceed or be more absolute or consummate than such estate and possession. "The matter and substance of the estate of cestui que use is the estate of the feoffee, and more he cannot have." (Bac. Uses, 47). "If the conusee of a fine, before any attornment, by deed indented and inrolled, bargaineth and selleth the signiorie to another, the bargainee shall not distrain, because the bargainor could not distrain, et sic de similibus, for nemo potest plus juris ad alium transferre quam ipsi habet." (Co. Litt. 309. b.) *Sir Moyle Finch's case* (6 Rep. 68 a.) was not cited by Mr. Williams, although, as far as it goes, it is an authority in his favour. There it was held, that a fine levied by a reversioner to the use of another than the conusee, passed the estate so completely that cestui que use might avow for the rent, or have an action for waste, without any attornment, because the Statute of Uses passed the seisin immediately, and made it impossible that the conusee should have a quid juris clamat, &c. But the reasons, such as they were, on which that conclusion was founded, were held to be inapplicable to a conveyance by deed; so that a grant of a reversion to uses was imperfect without attornment, and was capable of being perfected by attornment to cestui que use. (*Harvell v. Lucas*, Moore, 99 a). See *Dixon v. Harrison*, Vaugh. 51; and the conclusion of the judgment in *Long v. Buckeridge* (1 Str. 112). However it might have been in the case of a fine or a recovery, it is clear, equally on principle and on authority, that in that of a mere grant to uses the actual seisin or possession does not pass under the Statute of Uses, unless it is first in the grantee to uses. In the principal case John Heelis took by grant at common law a legal seisin of the rent, and he took nothing more than that seisin, and nothing more passed to the cestuis que use. The Court committed the mistake of confounding a conveyance to uses, transferring the title by a common law assurance, with a bargain and sale or covenant to stand seised of an existing rent by one already in the actual seisin and possession of the rent. Finding decisions to the effect, that the Statute of Uses transfers the actual possession, they looked no further, but jumped to the conclusion, that wherever the statute operates, the actual seisin passes. This would not have happened fifty years ago, when cases were the servants, not the masters, of principles.

A further moral to be deduced from the case is, that the old learning as to seisin and possession and uses, having done its work, is now obsolete, and should be abolished, as fines and recoveries have been abolished; provided that the task be undertaken by some one fully enveloped in the mantle of the late Mr. Brodie. It is the fashion to abuse the practice of conveyancing as being founded on the abstruse learning of uses. Theoretically, that is so, although the practice at the present day is simple enough, and none of the evils that the laity are taught to charge on the Statute of Uses are fairly attributable to it. But still the old learning crops up occasionally, and never to any good purpose.

### Reviews.

*The Notanda Digest, with Synoptical Index of the Decisions in Law, Equity, Bankruptcy, Admiralty, Divorce, and Probate Cases. By TENISON EDWARDS, Esq., of the Inner Temple, Barrister-at-Law. From December, 1862, to December, 1864. 8vo., pp. 151. [Day.]*

It is now nearly two years since Mr. Edwards commenced the publication of his very useful Notanda. Great praise is due to him for his enterprise in the commencement of an undertaking which, we believe, for a long time attracted little notice from the Profession, and for the perseverance and industry with which he has carried it on, until (as we must infer from its continuance to the present time) it has become a successful speculation. For the sake of those who are still unacquainted with the work, we may reprint the author's explanation of his original plan:—

"The question is: How can the practitioner with the greatest facility make himself acquainted with the latest decisions upon any given subject? And my reply is: By looking, not through a dozen annual digests, but by looking to the standard text-books, such as Sugden's Vendors and Purchasers, Williams on Executors, Jarman on Wills, &c.; and there, in juxtaposition with the topics treated of, and on the very page where the author in his next edition would introduce the modern decisions, to find clear and intelligible notes of such decisions as have been come to upon the particular topic since the edition of the work. Or, if the question turn upon the construction of a statute, to turn to the section of that statute, and there to find like clear and intelligible notes of the decisions upon that particular section. I have explained my plan in answering the above question, and I have no fear of a contradiction from any practical man."

The work consists of short notes of cases reported in the authorised and unauthorised reports, and of the statutes as they are passed, with references to the text books, leading cases, or statutes, in which they may be noted up, either by copying or by actually cutting out each note and gumming it to the place referred to, or by entering merely the number of the note, for which purpose the notes are numbered consecutively. The number affixed to the last entry in Notanda for December, 1864, is 3214.

Not content with the use of the work as an aid to noting up, Mr. Edwards now publishes with each number an index to that number, and to all those which have preceded it, so that there is never any more than one index for reference. This, he suggests, may serve as a partial index to all the text books referred to in the Notanda, and also be a digest, revised and renewed at frequent intervals, to all the cases from the time of

the commencement of the work; thus differing from the yearly and half-yearly digests hitherto published. The Digest, therefore, consists of the several numbers of Notanda collected together, with a brief index of titles, renewed from time to time, and referring to the several notes by their numbers. The convenience of the plan is, that it renders the accumulation of several years accessible by means of a brief and inexpensive index; the necessary inconvenience is, that every reference directed in the index must be made before it can be ascertained whether it is material or not. And we think that the index has been made a little too meagre. We must now let the author be heard in its favour:—

"The advantages of such a Digest are numerous. First, it will only be necessary to look to the one index for many years to come, instead of having to hunt through a number of annual digests; and in the interval between the last index and its successor (a period of about six months), the new cases will be found in the fresh numbers of Notanda, under the text books and statutes, instead of having to hunt through the reports of the current year. Secondly, by means of the Synoptical Index, the reference to the reversal, affirmance, overruling, or questioning of any case, will be found in juxtaposition with the reference to the original case, so that all trouble is removed in discovering whether a case is still law. Thirdly, by reason of the notes in Notanda being headed with a reference to the text book treating upon the subject of the note, the practitioner not only finds the new point for which he was in search, but without any trouble he also finds the reference to the text book where the subject is treated of at large. Thus, for instance, the practitioner desires to ascertain whether there has been any late authority upon the subject of an implied reservation of an easement. He looks to the Synoptical Index, and he finds two references—1070 and 1871. He turns to the first, where he finds the case of *Suffield v. Brown*, in which the reservation was implied, and he also finds the reference to *Gale on Easements*, where the general subject is discussed. He then looks to the second reference, 1871, and he finds that that decision has been reversed on appeal."

"In conclusion, purchasers are requested to remember, that for the purposes of the Digest they need not purchase over again that which they already have, and that their Digest will always be kept up complete by becoming subscribers to the Notanda and the Synoptical Index, or by purchasing the numbers subsequent to their Digest and the last Synoptical Index.

"The Notanda is now printed on both sides for the purpose of the Digest, as well as on one side for posting up in the text books and statutes."

## LAW REPORTING.

We understand that on Friday, the 20th January, the Bench of the Middle Temple unanimously passed resolutions in favour of the scheme recommended by the Bar Committee, to the same effect as the resolutions previously adopted by the Council of the Bench of Lincoln's Inn.

## JURIDICAL SOCIETY.—THE DIGESTION AND CODIFICATION OF THE LAW.

A MEETING of this society was held on Monday night at St. Martin's-place, Trafalgar-square, Mr. Macqueen, Q. C., presiding.

The Chairman stated, that the Lord Chancellor had intimated his intention to be present, but that an im-

portant engagement, which had been subsequently made for the noble lord, prevented him from attending.

Mr. *Hawkins* read a paper on "Digests and Codes, with reference to Law Reform." He began by noticing the difference between a digest and a code—a digest being merely a collection and statement of existing statutes and common law, while a code was a re-arrangement and re-expression of law in a systematic form. A code of law sought to embody the following elements:—First, a collection of rules, including explanations, definitions, descriptions, and qualifications of rules; secondly, examples and illustrations of rules; and, thirdly, passages from judgments, and other authoritative matter, containing the grounds and reasons of rules. A code did not necessarily involve any alteration in the existing law. Where a conflict of opinion existed, the code would merely state the difference, and leave the question where it stood; and when the point was settled, the passage would be replaced by the rule. The subsequent accretions of law would be from time to time reduced to systematic form, and incorporated with the code. It seemed to be clear that the law of a civilised country ought to exist in systematic form. Referring to the objections entertained to codification, he said that too much weight ought not to be attached to the supposed unfavourable experience of other countries. In most of these cases the codification had been an attempt to express, by legislative authority, abstract rules of law; but what he proposed was the re-arrangement and re-expression of the existing law. He denied that uncoded law possessed greater plasticity and flexibility, and would not admit that there was greater certainty of induction from precedent as opposed to the study of rules in express terms. On the contrary, he maintained that the master vice of case law was, the impossibility of fixing beyond subsequent dispute what were the exact limits of the question decided. He advocated the codification of the law, not only on the grounds that it was impossible for a lawyer to acquire a complete knowledge of any but his own branch of law—that the difficulties attending the study of the existing law was so great, and that it required so many years to acquire what was called a legal mind; but on the ground of the enormous rate at which case law and statute law was now increasing; that as statute law affecting isolated and particular cases was increasing, the consolidation of the law must go on, and that the improvement and simplification of important branches of law comparatively untouched by statute law, such as the law of real property, were from time to time required. Of the various plans of codification, he preferred that proposed by the Lord Chancellor—namely, a digest of the statute and common law, and then its systematic codification; and whether the society agreed with this plan or not, he trusted they would be of opinion that the systematisation of the law was a special work open to the lawyers of this generation.

The Chairman, in alluding to the history of codification, said that the great fault of the Justinian Code was, its want of method and arrangement. The French Civil Code, although it was sometimes unfavourably spoken of, had proved admirable in its working, and had been of much service to those who lived under it. The Americans, following the suggestion of Mr. *Benjamin*, were proceeding to codify their law. The Code of Louisiana was one of great ability, and was written in two languages, to suit the mixed population of the State; and the State of New York was now engaged in this great work. It was proceeding on the plan of entirely remodelling the law, and bringing it up to the standard of abstract perfection, and borrowed

freely ideas from foreign countries. That mode was adapted to a country which possessed a strong Government; but in this country, he believed they must follow the plan of the Lord Chancellor: first secure a digestion of the law—that was, a statement of the existing law—to be followed by codification.

Mr. *Daniel*, Q. C., said, that most lawyers were shocked with the present crude and undigested state of the law. He referred to the evils now arising from the indefinite extent of judicial discretion, and expressed his opinion, that any attempt at codification must be preceded by an arrangement of the existing law.

After some remarks from Mr. *R. S. Reilley*,

Mr. *W. M. Best* retained his original opinion, that codification was not desirable, because it was the law of language and not of principle. Custom was the proper basis of the law of any country; and when Rome was great and free the law rested on the same basis as the English law. He admitted the great defects of the present law, and he thought the proper course for the Legislature to pursue was the course of consolidation and amendment. Then if the law was to be codified, the British constitution must be codified; and he asked, if their constitution was written down on a piece of paper what would become of their liberties? (A laugh). Their political liberties could not be attacked at present, because they were so undefined; but if they were reduced to a few systematic propositions they would be much more easily encroached upon.

Mr. *C. H. Hopwood* said it was remarkable that all opponents of codification were compelled in the end to propose some piecemeal mode of codifying the law. They were not in favour of codification and amendment, and he thought that was a strong argument in favour of the object which the supporters of codification had in view. He thought that a judge would have as much freedom and satisfaction in drawing his inductions from a clear and succinct statement of law as from a variety of scattered and loosely defined decisions. He was sure that all lawyers would feel a comprehensive digest of the law to be an immense relief to their labours.

Mr. *J. Williams* adverted to a point which had not been noticed, namely, the variety of doubts, and the conflicting opinions which existed on many subjects. A digest and codification of the law were good, but they must be accompanied with legislation. As illustrative of the differences of the present state of the law, he mentioned that on the law of costs there were twenty treatises written, for the purpose of teaching the lawyers how to charge. (A laugh).

After some remarks from Mr. *Clark*, Mr. *Hawkins* briefly replied.

A vote of thanks was given to Mr. *Hawkins* for his able and instructive paper, and the meeting separated.

## COURT OF QUEEN'S BENCH.

HILARY TERM, 28 VICT.—Jan. 23, 1865.

THIS Court will, on Wednesday, the 1st day of February next, and on the three following days, hold sittings, and will proceed in disposing of the cases in the Special and Crown Papers, and any other matters then pending; and will also hold a sitting on Saturday, the 25th day of February next, for the purpose of giving judgments only.

BY THE COURT.

## OBSERVATIONS ON A DIGEST OF LAW\*.

["The law of England is the greatest grievance of the nation, very expensive and dilatory. There is no end of suits, especially when they are brought into Chancery. . . . There cannot be a worthier design undertaken than to reduce the law into method, to digest it into a body, and to regulate the Chancery so as to cut off the tediousness of suits, and, in a word, to compile one entire system of our laws. Nothing can raise the glory of the Queen's reign more than to see so noble a design set on foot in her time. This would make her name sacred to posterity, which would sensibly feel all the taxes they have raised fully repaid them if the law were made shorter, clearer, more certain, and of less expense."—*Bishop Burnet*.]

It will be easily understood that the object of the present paper is only to discuss briefly some of the great questions raised by the address at York.

The learned president speaks hesitatingly as to the expediency of an exchange of the English system of case law for a Code, but advocates a Digest †.

Even those who hold a Code to be the ideally perfect form of a nation's law need not, I think, much lament this hesitation. They may well be content to join in the more limited aspiration for a Digest, as the first object.

One reason seems sufficient for regarding codification as impracticable in this country at this time. That reason is furnished by the existence of the conflicting systems of law and equity. As long as they conflict they cannot be combined in a Code. The conflict can only be terminated either by the absorption of one into the other, or by the forcible amalgamation of the two by the action of the Legislature. The former is the work of time; practically, the latter must precede codification, not be attempted as part of it.

I. Let me, then, ask you first to consider the contents of the Digest.

The learned president appears (as I understand him) to have contemplated a Digest of case law merely. He sets out with this proposition:—"With the exception of the Statute of Frauds, the Statute of Limitations, and a few acts directed to very limited objects, the Legislature has laid no hand on the body of the common law."

This is, as it seems to me, to greatly under-estimate the extent and importance of the statutory element of the law. Large branches of the law are of statutory origin exclusively. Take, as an instance, the law of bankruptcy and insolvency. The poor law, again, is an instance; and I mention it to bring to mind that we must not confine our thoughts to those parts of

\* A paper by F. S. Reilly, Esq., read before the Department of Jurisprudence, &c., of the National Association for the Promotion of Social Science, on the 5th December, 1864, with reference to the address delivered at York by Sir James Wilde, President of the Department.

† Sir J. Wilde does not define the terms "Code" and "Digest," but the sense in which he uses them is plain on the face of his address; it is the usual sense; and it is the sense in which the terms are used in this paper.

A Code is the work of the legislative authority; its letter is everything; the French Codes are instances. A Digest is not, or need not be, more than a systematic classification of law. Comyns' Digest and Bacon's Abridgment are mentioned by Sir J. Wilde as works of this kind. A Code makes the law—a Digest merely states it. In the process of codification the law is inevitably altered in some points, and may be altered to any extent that seems expedient. A Digest proper does not, as such, necessarily alter a jot or tittle of the law.

It would be useful if the two terms were used in a uniform way.

the law which come under daily discussion in the superior courts.

In other divisions of the law, though the foundation is laid in the common law, the superstructure has been greatly modified by act of Parliament. Look at the law of real property, for example. Consider how extensively that was recast by the series of acts of William IV; what revolutions had been made in it by the great Statute of Uses, followed by the Statute of Wills. To go further back, let us recollect how the whole system of estates tail has grown up out of an act of Parliament. If you wanted to abolish family settlements, you would simply have to repeal the Statute De Donis.

Commercial law is a branch that has been thrown out from the old trunk of the common law in very modern times, and probably presents itself to the mind as substantially unaffected by acts of Parliament. But the truth is very different. Partnerships and mercantile corporations, insurance, ships, bills of exchange, banking, factors, and brokers—the law under these and many other heads has been greatly modified by legislation.

The history of many rules and practices is habitually lost sight of, and so long as the rule or practice is observed in ordinary course, and seems reasonable, it is assumed to be traditional, or to be founded on common sense; whereas it is often the direct product of a written law.

It might seem that in the system of pleading of a commercial country a plea of set-off must of necessity be as good a plea in discharge, as a plea of accord and satisfaction, and that the plea of set-off had therefore been always allowed by the law of England. But the fact is, that the rule that, where there are mutual debts between plaintiff and defendant, one debt may be set against the other is a purely statutory rule.

I will add two illustrations of a different kind which seem to me rather striking. The calendar of prisoners at a gaol delivery has quite the look of a thing prescribed by modern administrative regulation: it is expressly required by an early statute. Nothing has more the appearance of an ancient common-law proceeding than the giving the royal assent to bills in Parliament by commission under the Great Seal: it depends, however, for its validity on an act of Parliament.

And the sphere of legislation is a continually enlarging one. We have definitively come under the influence of the last of the three agencies pointed out by Mr. Maine (in his book on *Ancient Law*) as those by which successively law is brought into harmony with society. The days of the domination of legal fiction are gone by; the powers of equity are no longer self-expansive; the authority of legislation is asserting itself more and more.

Even if we look at the case law alone we soon perceive that a very large part of it consists of decisions on the construction and application of acts of Parliament. Such cases cannot be embodied in a Digest unless the effect of the enactments on which they turn is represented there.

I should submit to you, then, that there are two inseparable constituent parts of a Digest. You cannot, in the nature of things, have a Digest of the unwritten law apart from the written law. You cannot, that is, without combining statute law and case law, have a Digest of the character of that which Sir James Wilde contemplates, and such as is alone worthy of being attempted. You may have a scissors-and-paste compilation of marginal notes from the report books, but not such a work as the learned president pictures; one in which (to quote his forcible language)—

"The general principles and broad bases on which our common law reposes, and which tacitly guide the decisions of our courts, [will] be brought to the surface, grouped together, subordinated in their several relations, and contrasted in their differences."

In this combination of case law and statute law, it must be remembered you will have to deal not merely with the reports of the decisions of the three superior courts of law, though the views of the learned president seem almost limited to them. Chancery, Admiralty, Ecclesiastical, and Bankruptcy cases, must all be worked up into a consistent whole. A Digest of case law, as developed on one side of Westminster Hall, would be merely delusive as a representation of the law of England.

Enactments relating to administrative details of business under the management of the different Government departments need not be included in the Digest. They are not so much laws, that is, rules of civil conduct for the people, as instructions issued by Parliament, the Sovereign, to its subordinates, for their official guidance.

One great difficulty of execution would be to hit the just mean between excessive generality and too great detail. The leaning should be to give as much particularity to the contents as possible, consistently with proper compression. Highly generalised propositions are of little practical value in law.

Each proposition deduced from case or statute would, of course, be accompanied by references to authorities; each maxim, by a note of the cases, serving as instances or illustrations of its operation or scope.

In many parts it would be necessary to distinguish what is law in relation to things done, or rights acquired, before a given point of time—for instance, with respect to wills before 1838.

Possibly, in some parts it would be found of advantage to advert to the history of the law. This could be done in a subordinate statement or note, kept distinct from the proposition. There should be no blending of history with statement of result, after the confusing fashion of some treatises.

The heads or divisions should be such as the actual state of the law suggests. They should not be selected on any theory. In other words, the distribution of the contents should be natural, with no attempt at scientific analysis. The work is to be a practical work; and any philosophical classification of human rights and acts (which are the subject of law) is of necessity unpractical.

II.—Next, how is such a work to be accomplished?

The learned president declares his belief, that a Digest, as conceived by him, is within the bounds of reasonable time and labour; but he adds—"I do not conceal from myself that the first judicial minds of the country are alone adequate to the task, at least in its ultimate stages; and that it is far beyond the reach of the unpaid services of occupied men."

I, for one, think it is to be regretted that the learned author of the address did not take the opportunity of inculcating the further truth, that what is wanted first—first in time and first in importance—is the constitution of some permanent superintending authority. Without permanence, we may be convinced, all attempts will be merely disappointing. The work to be done is so extensive and difficult as to demand the devotion for a long series of years of a body of men acting on definite principles, and with a settled plan.

All that is needed in the superintending body would be found (the suggestion is not new\*) in a Committee

\* To the best of the writer's knowledge, the suggestion was first made some few years ago in an elaborate series of memoranda respecting a Ministry of Justice, prepared for



of the Privy Council, organised as the Committee of the Council for Education, with the Lord Chancellor as president, with a paid vice-president sitting in the House of Commons, and with the necessary officers and clerks. To such a committee the law officers of the Crown might be joined as assessors. The first duty of the office would be to investigate the principles on which a Digest should be framed, to lay down rules for its formation, to employ competent persons for the collection and arrangement of materials in the different divisions of the work, and the preparation of drafts, to revise and complete the work, and to issue it with the authority of the Crown.

There would, I conceive, be no difficulty in so regulating the constitution and functions of such a Committee of the Privy Council as to preclude all apprehension of encroachment on the present provinces of the Lord Chancellor and Home Secretary.

When once established, much other work would be found for the department.

There is great need of some better system for the preparation of the bills of the various Government departments. The arrangement, and form, and mode of publication of the sessional collection of acts of Parliament are much in want of supervision. The earlier volumes of the statutes have to be edited, shewing, with other improvements, the results of the work of expurgation which has for some years been going on under the superintendence of the present Lord Chancellor. All these things, for instance, would properly come under the cognisance of such a department. So, too, would the vexed question of law reporting. It might also initiate valuable reforms on subjects (such, for instance, as the uninviting matter of the law of judgments as affecting land) which there is little inducement for any member of the Government, or of either House of Parliament, to take up.

III. Lastly, when the Digest is framed, how is it to be made authoritative?

The learned president states his desire to see the Digest "finally confirmed by act of Parliament." The mode of confirmation intended is not defined. In any form confirmation by act of Parliament would be attended with serious difficulties. If the whole body of English law, in principle and in detail, were to be brought in any manner under review in the Houses of Parliament, a vast number of most grave and delicate subjects would be opened, how and when to be closed no one could tell.

Even if it could be obtained from Parliament, an enactment that the contents of the Digest should be deemed to be law would be inappropriate. A Digest simply expounds the law as it finds it. Exposition is widely different from legislation. A Digest, to be faithful and exhaustive, must often state questions as unsettled, and leave them so. In some way, it must continue the record of the dissents or dubitations of learned members of the Courts by which cases have been decided\*. In some way it must indicate the judicial or professional doubts that affect the authority of decisions not absolutely overruled. But all this would be out of place in an act of Parliament. When the Legislature speaks, it must lay down a definite rule, one way or the other.

official consideration, by Mr. Arthur Symonds, which have not been published, but a copy of which, in the possession of a friend of the writer's, he saw in the course of last year.

\* As 1 Com. Dig. 471, 4th ed.

"So, a plea to an indictment, when filed, but not upon record, shall be amended; for the Court has power over all before judgment.—R. Holt dub. (Sal. 47).

"... Nor a quo warranto.—R. per three J. (Cro. Car. 312); per two J., Hale cont. (2 Lev. 139)."

Again: so far as the Digest was based on statute law, the enactment of it by Parliament would be, to say the least, superfluous. So far as it was based on case law, the enactment of it by Parliament would be a most hazardous operation; that would be the introduction into the case law of an element wholly foreign to its nature.

Assuredly it is not in England that it can be maintained, that the direct action of the Legislature is necessary in order to make law. To maintain this is to deny that case law is law.

A proposal for not only compressing the law into a compendious and rational form, but for also revising and amending it contemporaneously on all points on which it seems to require amendment (the work, when completed, to be enacted as absolute law by Parliament), is a very different proposal from that adopted by Sir J. Wilde. When plainly stated, it must, I conceive, be seen to be impracticable. How long would a Digest of this kind (which, indeed, would have many of the characteristics of a Code) take in execution? Who is to decide on what amendments are desirable? Would the legal profession or the public be satisfied to concede to any body of men a general authority to amend? Certainly not, I think, except on condition of a subsequent parliamentary review of the amendments, a thorough and open discussion of them, in all their details, and in all their bearings—a condition which would practically nullify the concession. It cannot be supposed that any body of men would be allowed to make a Digest of an authoritative kind, on any terms but that of reproducing the law precisely as they find it.

It seems to me, therefore, that the Digest, if it were, as it ought to be, of a purely expository character, would need no legislative confirmation, and that the scheme for its formation should be studiously framed with a view to avoid all necessity for such confirmation.

The Digest should, I submit, be left to rest for such acceptance as it would require at first, merely on its intrinsic merits, and on the fact of its compilation by official authority. For greater solemnity, it might be promulgated by proclamation from the Queen in Council. Copies would be sent by authority to the judges of the superior courts, to county courts and other inferior courts, to quarter sessions and magistrates.

Once issued, it would soon establish itself. It would be turned by night and turned by day in the hands of those concerned to know the law. It would fill a place somewhat like that once filled by Sir E. Coke's writings. Sir E. Coke summarised the Year-books and other early authorities; his summaries were relied on, and the original authorities were so seldom reverted to in ordinary practice, that they were in a manner forgotten. He stood, as it were, between the living and the dead.

And such would be the position of the Digest. It would be cited at the bar and on the bench; it would be *prima facie* evidence of the law; it would be revised and improved; when thoroughly tested it would, at length, by a natural process, in accordance with the traditions of English case law, without extrinsic aid, become the authority on the law.

It might, indeed, then be found convenient to turn some chapters of it into acts of Parliament. And this

\* "I would not that the authority of the cases should necessarily be extinguished by the authority of the Digest. Unless expressly set aside, and inconsistent with other decisions better approved, I would have all decisions remain of authority, content to await the time when the life shall have passed into their offspring, and they fall away of themselves, and pass into a sure decay."—Sir J. Wilde's Address.

would be really valuable consolidation, a name which often stands for operations of great risk and difficulty, and of very dubious benefit.

At any rate, the result would be, that all parts of the case law condemned as unsound by the Digest, would be discarded as authority, and ultimately would be in effect expunged from the law. And then condensed editions of parts of the reports containing the case law might be published as demand required.

I have thus endeavoured to discuss some points in this great subject, principally those suggested by the address at York, not from any wish to detract from the merits of that address—bespeaking as it does our admiration, not only by its matter, but also by the vigour and the polish of its style—nor for any personal motive. I have offered this paper to your consideration, simply because I think the questions raised by the address cannot be too urgently pressed on the attention of the public, or too often brought before those by whom the opinion of the public may be guided.

While, speculatively, those questions are of the highest interest, the practical importance of the decision come to on them is vast. It concerns not only England but also all those wide parts of the earth where the law of England, immediately or derivatively, exclusively or partially, furnishes the rules of conduct.

To have faced and conquered the difficulties that must attend the recasting of the form of an ancient and voluminous law, would of itself be an honour to England.

The merits of her law would be brought to the surface; now, scarcely is a German explorer gifted with enough of patient labour to dig for them.

If the law of England were made accessible, visible, tangible, it would compete for adoption in countries (not so few as might be supposed) driven by circumstances to import their law in the mass. I noticed not long ago in an English correspondent's letter a suggestion that the new Emperor of Mexico should start by adopting the Codes of France. A country such as Mexico, longing (if I may apply the phrase) to close for itself the era of revolutions, would find in the English law (for example) rules of succession to property on death more favourable to the stability of political institutions (and besides in many respects more reasonable) than the system furnished by the law of France.

The difficulties are undeniably great. They have to be met and overcome. Every candid lawyer must admit that it is merely a question of money. Money will command men and time. The present Lord Chancellor has more than once publicly announced his anxiety to undertake such a work, and he would assuredly go far to accomplish it if proper means were placed at his disposal. Let us have confidence that some statesmen will see it is not less patriotic to find some few thousands a year for a noble and beneficent work of law reform, which would enlighten the people and relieve them from a weight that presses on their progress, than to sink million after million in fencing off the contingent evils of war, which all the while they are almost believing will never come.

#### REGISTRATION OF WORKS OF LITERATURE, &c., AT STATIONERS HALL.

THE following return has been made to an order of the Hon. the House of Commons, dated the 4th March, 1864:—

The name of the party appointed by the Stationers Company as registering officer of copyrights is Joseph Greenhill, who engages the necessary assistants, and is paid by the fees received by him under the several

acts of Parliament. The fees have amounted on an average of the last six years to 436*l.* 11*s.* per annum.

There are three books kept for the purpose of registration, viz.:—

A register of entries of proprietorship, licenses, and assignments, and minutes of consent.

A register of entries of proprietorship under the International Copyright Act.

A register of entries of proprietorship in paintings, drawings, and photographs.

Between the 1st January and the 31st December, 1863, were registered—

British books, 1534. Foreign books, &c., 818.

Works of art, 3611.

The number of assignments registered during the same period was 132.

And the number of certificates furnished was 197.

*Jos. Greenhill,*

Registering Officer, Stationers Hall.

#### ILLEGALITY OF MONASTIC ORDERS.

THE Lord Chancellor and the Lord Justice of Appeal have just given judgment in a case arising out of a bequest to monastic institutions, which has taken many very much by surprise, and involves questions and interests of vast importance. Michael John Sims, of Cork, made a will, dated the 15th November, 1861, in which he bequeathed to the Rev. R. White and the Rev. B. T. Russell, of St. Saviour's Catholic Church, Dublin, the sum of 500*l.*, to be applied as they should deem best for the education and maintenance of two priests of the Order of St. Dominic, in Ireland; also 500*l.* to the Rev. P. T. Conway, of St. Mary's Priory, Cork. The Lord Chancellor and the Lord Justice of Appeal pronounced the bequests to be void, not upon any technical defect, or by analogy, but because the purposes for which those bequests were given in trust are illegal, and directly prohibited by statute. The Emancipation Act declares it a misdemeanour for any person to found, or enter into, Jesuit or other religious orders, and provides for their gradual extinction. It imposes highly penal consequences on those who contravene or resist its operation. "The misdemeanour so committed," said the Lord Chancellor, "is of the highest class known to the law." The bequest in the case, accordingly, as one enabling a person to fly in the face of an act of Parliament, was absolutely void. On this narrow ground he held, that the matter was cut short in limine, and that the legacies could not be dealt with under the doctrine of *cy-près*, or in any other way. The Lord Justice of Appeal is equally unhesitating in his dictum:—"The act said that monastic orders are illegal, and their existence a violation of the law. The testator in the case under notice said, 'It is my object to effect that violation.' Under those circumstances he must hold, that the bequests were totally void." The object of the bequests was to afford means for perpetuating institutions which the Legislature declared ought to be abolished. "It was utterly impossible to read the prohibitory and penal clauses in those enactments without coming to the conclusion, that bequests to continue those orders, so violating the act of Parliament, were void."

The *Mail* comments as follows on the judgment of their Lordships:—

"We do not know how much property, the distribution of which may be in abeyance, those judgments will affect. We cannot say whether impoverished families and rightful successors, who have already been deprived of their inheritance, are placed by them in a position to recover any portion of their relatives' mo-

ney from the monastic grasp. But even as controlling such abnormal deathbed dispositions in future, this manly vindication of the law is of the utmost importance. It is, we believe, the conviction of every moderate and right-thinking man, whatever his creed, that such a law ought to exist, for the protection of society from the extravagant growth of monasticism, and the disappointments and miseries attendant upon eccentric bequests made under the terrors of a future world. In this interpretation of what may truly be called the constitution, there has been no setting up of 'a penal law.' As we have already said, the same policy of discountenancing the absorption of property into monastic hands now rules throughout Christendom, as it ruled in England when the Statute of Mortmain was enacted by Roman Catholics in Roman Catholic times. We, therefore, may claim from the public, without distinction, the indorsement of the opinion that monastic orders ought to be checked in the acquisition of property by will. Seeing the mischief they have done in other countries—Roman Catholic countries—their foreign origin, the agency they frequently constitute for political purposes, and the wholly unnatural character of the practice, it is for the interest of society that they should not be fostered. If any proof were needed that the burthen of those impolitic dispositions of property was deeply felt by those most interested, it is surely furnished in the circumstances of the case before us, in which a Roman Catholic gentleman, as residuary legatee, has successfully contested bequests to Dominican clergymen, seeking for the purpose the protection afforded to him by the Emancipation Act."

### WESTBURY'S WALK.

[From *The Standard*, Jan. 25.]

THE Chancellor sat in his easy chair,  
With a terrible frown on his brow,  
"My Bankruptcy Act is a failure," he said,  
"But I know not the why and the how."  
"For I framed it myself, with labour and pains,  
Being learned in England's laws,  
And a good double meaning took care to provide  
For every single clause."  
"Yet trade's in a turmoil, the lawyers are posed,  
The public is ill at ease,  
It *must* be the fault of the messenger men,  
Or else of the assignees."  
"For it cannot be in the act itself,  
And I so clever and wise!  
But it may be well while altering it  
To throw dust in the people's eyes."  
"O who will go round the courts?" he cried,  
"This wrong to ferret and find?"  
"Oh, I," said a bold commissioner,  
"I'm just to your lordship's mind."  
"Give me a man to do the sums  
And I'll your commands obey."  
A colleague was found, and off they set,  
And thus they talked by the way.

\* The writer says that the above verses are a faithful account of the late inquiry into "the alleged irregularities in the Bankruptcy Courts," such irregularities being mainly, and in some cases wholly, produced by the ambiguous wording of the act. People are beginning to perceive that there is a "necessary official person" very much wanted—i. e. a reviser of all documents drawn up by the Lord Chancellor, from an act of Parliament down to a familiar epistle to Mr. Paget.

"Oh, the act is a failure it must be owned,  
But whoever else may be shamed,  
'Tis ours to shield our noble chief,  
For little he likes to be blamed."  
"So though the expenses are very much more,  
And the profits are very much less,  
And the fraudulent debtor's the only man  
That Lord Westbury's name can bless;  
"While the honest one's in a woful plight,  
And the creditor rants and raves,  
We must turn the wrath from the Chancellor's head  
Upon those of the messenger knaves."  
"And though the act is a failure, still,  
As no discredit must be  
To its author attached—we'll heap it upon  
Each villainous assignee."  
The books were opened, accounts gone through,  
And the messengers shook in their shoes,  
For their salaries were not so over high  
That they'd very much money to lose.  
It was found that they'd charged their railway fares,  
And the beer that their men had had,  
And the paper their lists were taken upon—  
All which was terribly bad.  
But things looked blacker and blacker still  
In the case of the assignees;  
For they'd done—what they had had leave to do—  
Had pocketed various fees  
For cases with which they had dealt before  
The act ever came into force.  
Having done the old work, they were told the old pay  
Was theirs as a matter of course.  
But the chief inquisitor foamed at the mouth  
With virtuous indignation,  
And the shortest word that he spoke was "fraud,"  
And the longest was "peculation."  
"You'll all of you pay some hundreds of pounds!"  
Thus issued his stern decree.  
"What, back to the bankrupts' estate?" "No; to  
The commissioners' fund," said he.  
Moreover, this pleasant alternative  
To each trembling wight he gave—  
"If you don't, the Lord Chancellor'll turn you out;  
If you do, you'll be called a knave!"  
The victims must brook these merciless terms,  
Or their homes be desolate made.  
So they ground their teeth with a bitter curse,  
And then—the money was paid.  
The two inquisitors hied them back,  
And together did pleasantly dine,  
And cooily sat in agreeable chat  
Over their walnuts and wine.  
"Our work has been done pretty well," said one;  
"It was dirtyish work," said the other;  
"Oh, pooh! if you'd rise in the world," he replies,  
"You must learn such scruples to smother."  
"What matters the rage of a dozen men,  
Or the tears of their dozen wives?  
What though we have laid a wearyish load  
On a few insignificant fives?  
"Though the charge of fraud to an honest man  
Torture of tortures be?  
Though some are half ruined, and one is gone mad  
With grief and anxiety?  
"Yet we've served our noble Chancellor well—  
That cleverest, wisest of men!  
By throwing the blame on the underlings,  
While he frames his act again!"

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## THE JURIST.

LONDON, FEBRUARY 4, 1865.

THE session of Parliament will in a few days commence, and at present there seems to be no expectation of any political question arising which will lead to a trial of strength, or a premature dissolution. We might, therefore, reasonably look forward to the introduction and passing of useful social measures, and especially of such measures of law reform as are acknowledged to be necessary. If it is the intention of the Government to introduce any such measures, they have hitherto kept it secret; if it is not, it is to be hoped that some of the many legal Members of Parliament will exert themselves to effect those improvements in the law which are most urgently required.

First and foremost is a bill to amend the law of bankruptcy. Lord Westbury's Act has proved itself a failure. Its defects, very soon after it came into operation, created murmurs of dissatisfaction, which have become louder and louder, till at last they have grown into a general cry of complaint. The judges themselves speak with some bitterness of the defects in the act; and the numerous deeds of arrangement, under sect. 192, which they have been compelled to hold invalid, point to the necessity of these provisions being made more clear and intelligible to those whose duty it is to frame these deeds. As it has been decided, and we think rightly and reasonably, that a *cessio bonorum* is not necessary for the validity of a deed of assignment, it is still more imperative upon the Legislature to protect the rights of non-assenting creditors. It cannot be impossible to frame a model deed, which, with certain alterations and modifications applicable to each particular case, it should be the duty of the parties to adopt. There are in the House of Commons gentlemen quite alive to the necessity of amending this part of the bankruptcy law, and quite competent to effect the amendment, and they would do good service to the country if they would earnestly apply themselves to the work. Another great ground of complaint is the expense of working a bankruptcy. Lord Westbury, when he introduced the measure, spoke with great force of the enormous cost which in the then state of the law was incurred, and of the large amount of assets which were wasted, before anything was realised to the creditors. We hear the same complaints of his own pet measure. In fact, without going at great length into the subject, we think it may be said, that no one person can be found conversant with the working of the bankruptcy law who would not say that it requires extensive amendment. If this be the case, we may surely hope that the Legislature will take up the subject vigorously and speedily.

Another branch of the law which by common consent requires amendment is the law of patents; not so much with reference to the law itself, which regulates the granting of patents, as with reference to the nature of the tribunal whose duty it is to try patent causes. A committee has been sitting upon the subject, but we are not aware that they have propounded

any scheme for remedying the evil. It constantly happens that a patent cause occupies three or four days, or even more; day after day a jury, selected without any reference to their scientific acquirements, listen with yawns and despair to scientific witnesses contradicting each other, and eventually the judge has cast upon him the duty of extracting from all this evidence, in the best way he can, the points upon which the jury have to give their verdict. He may or may not be a man of science; at all events, it is only in rare instances that a judge can keep up his knowledge of science, and have it fresh and ready to be applied to the case before him. It is almost a wonder that a judge has not already sunk under the exhaustion of trying a patent cause. Perhaps when this does take place, the Legislature will think it is time to substitute a more appropriate tribunal. Some of the Vice-Chancellors have lately experienced the labour of trying such causes, and they can add their testimony to the necessity for an alteration in the mode of trial. Here, then, is another subject of law reform on which the time of the Legislature may be usefully employed.

The Divorce Court is also a subject which, we venture to think, deserves the gravest consideration. It is not to be denied that the poor, equally with the rich, are entitled to avail themselves of this court; nor is it to be denied that, as a general rule, it is right that courts of justice should be open to the public. But we would ask any thinking person whether the publication of the evidence, which is daily given in this court, is not a curse to the community? The daily papers circulate through the country details of adulteries, which must tend to corrupt. We need only refer to the two recent cases of *Codrington v. Codrington* and *Chetwynd v. Chetwynd* to prove the truth of this assertion. It is, no doubt, a very difficult question to deal with. One sweeping mode of amendment would be to abolish the law of divorce, and make the marriage union indissoluble—a measure which many persons think would tend to check adultery when marriage with the adulterer was impossible; but in a Protestant country such a measure is not to be expected. Another plan by which the publication of these details would be prevented is to exclude the public from the court, but this would be declared unconstitutional. There is a middle course, namely, that the judge should have the power, when he thinks proper, of excluding the public from the court. This was proposed a few years since, but rejected by the House of Commons, at the instigation, we believe, of Mr. Edwin James. Perhaps, as the evil effect of the publication of these trials is now more extensively acknowledged, some such provision would be allowed to pass. There are rumours that an alteration is likely to be made in the constitution of this court, namely, that on the retirement of the present judge of the Admiralty Court, that and the Probate Court will be united under one judge, while the Divorce Court will have an assistant judge to aid the present judge of the court, under the increasing quantity of divorce business. Whether or not an assistant judge is required, we

think it clear that the divorce business and probate business are too much for one man; and that the separation of the two courts is, at all events, necessary. It is false policy to overwork a judge for the sake of a small saving; and the same remark will apply to the Common-law Courts—in two of which, at all events, the judges have too much to do. It has been proposed to distribute the business over the three courts, so that one of them shall not be comparatively idle while the other two are overworked. But we think that, considering the increasing business and commerce of the country, there is likely to be work enough for three courts, and that the proper course would be to increase the number of the judges of the superior courts. This would remedy the delay which takes place in the trial of cases at Guildhall, where the arrears are a real and serious evil—an evil which at present there is no hope of curing; the judges do their best to clear the lists, but they can only sit for a limited time, and it is only by referring so many cases to arbitration that any effect is produced upon the lists.

This last observation leads us to another subject on which, we think, the Legislature might well apply themselves, namely, the expediency of creating courts of arbitration. We have already discussed the subject in this Journal, and we believe it to be one which has been much discussed in the Profession—a certain number of judicial arbitrators trying causes from day to day, without the delays which occur in the present system of arbitration, would clear off a large number of causes. The business would be distributed among them impartially; they would render the attendance of counsel and parties compulsory, as it is at Nisi Prius, and they would not be subject to the application for adjournments and postponements to which legal arbitrators are now exposed, and to which they cannot help yielding. The appointment of such courts of arbitration would of course be attended with some expense, but when compared with the income of the country it would be but trifling; and it would very much aid in curing the grievous delay which everybody conversant with the business at Guildhall must acknowledge.

These several subjects of law reform deserve the consideration of Parliament. It cannot well entertain a subject more deserving consideration than efficient laws, and the efficient administration of these laws. It is a subject on which party spirit need have no influence, and when there are so many able lawyers members of the Legislature, it is somewhat of a reflection upon them, that defects, acknowledged by all to be serious and increasing, should be allowed to continue.

**NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.**—The first meeting of the Reformatory Section of the Department of Jurisprudence and Amendment of the Law, will be held at 1, Adam-street, Adelphi, on Monday next, the 6th inst., when a paper will be read by Captain Cartwright, on "Prison Discipline." The committee of the section will meet at 7 o'clock, and the chair will be taken at 8 o'clock.

## LAW REPORTING.

At a pension of the Benchers of Gray's Inn, held on the 25th January, 1865, upon taking into consideration (pursuant to adjournment) the communication made to this society by the Attorney-General on the subject of law reporting, and also upon reading and considering the resolutions of the Honourable Societies of Lincoln's Inn and the Middle Temple respectively upon the same subject, it was resolved,

That this society regret that they have not sufficient confidence in the scheme to induce them to join in it.

Ordered, that this resolution be communicated to each of the other Inns of Court.

On the 27th January, 1865, the Bench of the Inner Temple (with the resolution of Gray's Inn, as well as those of Lincoln's Inn and of the Middle Temple before them) unanimously passed resolutions approving of the scheme of the Bar Committee, in the same terms as those of Lincoln's Inn and the Middle Temple, already published.

At a council of the Benchers of Lincoln's Inn, held on the 31st January, 1865, the communications received from the other Inns of Court on the subject of law reporting, viz. resolution of the Honourable Society of the Middle Temple, dated the 20th January inst.; resolution passed by the Honourable Society of Gray's Inn, on the 25th January; and resolution of the Honourable Society of the Inner Temple, dated the 27th January, were read; and it was resolved,

1. That, while regretting the determination of Gray's Inn not to join in the scheme, this society is willing to concur with the Inner Temple and Middle Temple alone in giving the guarantee mentioned in the fourth rule of the scheme; each of the three societies<sup>\*</sup> guaranteeing two-sevenths of the 500l. per annum, and to nominate two members of the Council, proposed by the first rule.

2. That, at the adjourned council, to be holden on Wednesday, the 15th February next, this society will proceed to elect two members of the Council under rule 1.

Ordered, that these resolutions be communicated to the other Inns of Court, and to Serjeants' Inn and the Incorporated Law Society.

## Court Papers.

### EQUITY SITTINGS, AFTER HILARY TERM, 1865.

#### Before the LORD CHANCELLOR.

##### At Lincoln's Inn.

Wednesday .. Feb. 8	{ First Seal.—Appeal Motions and Appeals in Bankruptcy.
Thursday .....	9 Petitions and Appeals.
Friday .....	10 Appeals.
Saturday .....	11 Appeals in Bankruptcy and Appeals.
Monday .....	13 Appeals.
Tuesday .....	14 Appeals.
Wednesday ....	15 Appeals in Bankruptcy and Appeals.
Thursday .....	16 { Second Seal.—Appeal Motions and Appeals.
Friday .....	17 Appeals.
Saturday .....	18 Appeals in Bankruptcy and Appeals.
Monday .....	20 Appeals.
Tuesday .....	21 Appeals.
Wednesday ....	22 Appeals in Bankruptcy and Appeals.
Thursday .....	23 { Third Seal.—Appeal Motions and Appeals.

\* Gray's Inn was asked to guarantee one-seventh.

Friday .....	24	Appeals.
Saturday .....	25	Appeals in Bankruptcy and Appeals.
Monday .....	27	} Appeals.
Tuesday .....	28	
Wednesday.. Mar. 1		Appeals in Bankruptcy and Appeals.
Thursday .....	2	Fourth Seal.—Appeal Motions and Appeals.
Friday .....	3	Appeals.
Saturday .....	4	Appeals in Bankruptcy and Appeals.
Monday .....	6	} Appeals.
Tuesday .....	7	
Wednesday .....	8	Appeals in Bankruptcy and Appeals.
Thursday .....	9	Fifth Seal.—Appeal Motions and Appeals.
Friday .....	10	Appeals.
Saturday .....	11	Appeals in Bankruptcy and Appeals.
Monday .....	13	} Appeals.
Tuesday .....	14	
Wednesday .....	15	Appeals in Bankruptcy and Appeals.
Thursday .....	16	Sixth Seal.—Appeal Motions and Appeals.
Friday .....	17	Appeals.
Saturday .....	18	Appeals in Bankruptcy and Appeals.
Monday .....	20	} Appeals.
Tuesday .....	21	
Wednesday .....	22	Appeals in Bankruptcy and Appeals.
Thursday .....	23	Seventh Seal.—Appeal Motions and Appeals.
Friday .....	24	Appeals.
Saturday .....	25	Appeals in Bankruptcy and Appeals.
Monday .....	27	Petitions and Appeals.
Tuesday .....	28	Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

*Before the LORDS JUSTICES.*

*At Lincoln's Inn.*

Wednesday.. Feb. 8		First Seal.—Appeal Motions and Appeals.
Thursday .....	9	Appeals.
Friday .....	10	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	11	} Appeals.
Monday .....	13	
Tuesday .....	14	
Wednesday .....	15	
Thursday .....	16	Second Seal.—Appeal Motions and Appeals.
Friday .....	17	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	18	} Appeals.
Monday .....	20	
Tuesday .....	21	
Wednesday .....	22	
Thursday .....	23	Third Seal.—Appeal Motions and Appeals.
Friday .....	24	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	25	} Appeals.
Monday .....	27	
Tuesday .....	28	
Wednesday.. Mar. 1		
Thursday .....	2	Fourth Seal.—Appeal Motions and Appeals.
Friday .....	3	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	4	} Appeals.
Monday .....	6	
Tuesday .....	7	
Wednesday .....	8	
Thursday .....	9	Fifth Seal.—Appeal Motions and Appeals.
Friday .....	10	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	11	} Appeals.
Monday .....	13	
Tuesday .....	14	
Wednesday .....	15	

Thursday .....	16	Sixth Seal.—Appeal Motions and Appeals.
Friday .....	17	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	18	} Appeals.
Monday .....	20	
Tuesday .....	21	
Wednesday .....	22	
Thursday .....	23	Seventh Seal.—Appeal Motions and Appeals.
Friday .....	24	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	25	} Appeals.
Monday .....	27	
Tuesday .....	28	

*Notice.*—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.*

*At Chancery-lane.*

Wednesday.. Feb. 8		First Seal.—Motions and General Paper.
Thursday .....	9	} General Paper.
Friday .....	10	
Saturday .....	11	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	13	} General Paper.
Tuesday .....	14	
Wednesday .....	15	} Second Seal.—Motions and General Paper.
Thursday .....	16	
Friday .....	17	
Saturday .....	18	
Monday .....	20	} General Paper.
Tuesday .....	21	
Wednesday .....	22	} Third Seal.—Motions and General Paper.
Thursday .....	23	
Friday .....	24	
Saturday .....	25	
Monday .....	27	} General Paper.
Tuesday .....	28	
Wednesday.. Mar. 1		} Fourth Seal.—Motions and General Paper.
Thursday .....	2	
Friday .....	3	
Saturday .....	4	
Monday .....	6	} General Paper.
Tuesday .....	7	
Wednesday .....	8	} Fifth Seal.—Motions and General Paper.
Thursday .....	9	
Friday .....	10	
Saturday .....	11	
Monday .....	13	} General Paper.
Tuesday .....	14	
Wednesday .....	15	} Sixth Seal.—Motions and General Paper.
Thursday .....	16	
Friday .....	17	
Saturday .....	18	
Monday .....	20	} General Paper.
Tuesday .....	21	
Wednesday .....	22	} Seventh Seal.—Motions and General Paper.
Thursday .....	23	
Friday .....	24	
Saturday .....	25	
Monday .....	27	} General Paper.
Tuesday .....	28	

N. B.—Unopposed Petitions must be presented, and copies

left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

*At Lincoln's Inn.*

Wednesday .. Feb. 8	{ First Seal.—Motions, Adjourned Summons, and General Paper.
Thursday .....	{ General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 13
Tuesday .....	{ 14
Wednesday .....	{ 15
Thursday .....	{ Second Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 20
Tuesday.....	{ 21
Wednesday .....	{ 22
Thursday .....	{ Third Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 27
Tuesday.....	{ 28
Wednesday.. Mar. 1	{ General Paper.
Thursday .....	{ Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 6
Tuesday.....	{ 7
Wednesday .....	{ 8
Thursday .....	{ Fifth Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 13
Tuesday.....	{ 14
Wednesday .....	{ 15
Thursday .....	{ Sixth Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 20
Tuesday.....	{ 21
Wednesday .....	{ 22
Thursday .....	{ Seventh Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	{ Petitions, Adjourned Summonses, and General Paper.
Saturday .....	{ Short Causes, Adjourned Summonses, and General Paper.
Monday.....	{ 27
Tuesday.....	{ 28

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART.*

*At Lincoln's Inn.*

Wednesday .. Feb. 8	{ First Seal.—Motions and Causes.
Thursday .....	{ 9

Friday .....	{ 10
Saturday .....	{ 11
Monday.....	{ 13
Tuesday.....	{ 14
Wednesday .....	{ 15
Thursday .....	{ 16
Friday .....	{ 17
Saturday .....	{ 18
Monday.....	{ 20
Tuesday.....	{ 21
Wednesday .....	{ 22
Thursday .....	{ 23
Friday .....	{ 24
Saturday .....	{ 25
Monday.....	{ 27
Tuesday.....	{ 28
Wednesday.. Mar. 1	{ Causes.
Thursday .....	{ 2
Friday .....	{ 3
Saturday .....	{ 4
Monday.....	{ 6
Tuesday.....	{ 7
Wednesday .....	{ 8
Thursday .....	{ 9
Friday .....	{ 10
Saturday .....	{ 11
Monday.....	{ 13
Tuesday.....	{ 14
Wednesday .....	{ 15
Thursday .....	{ 16
Friday .....	{ 17
Saturday .....	{ 18
Monday.....	{ 20
Tuesday.....	{ 21
Wednesday .....	{ 22
Thursday .....	{ 23
Friday .....	{ 24
Saturday .....	{ 25
Monday.....	{ 27
Tuesday.....	{ 28

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.*

*At Lincoln's Inn.*

Wednesday .. Feb. 8	{ First Seal.—Motions and General Paper.
Thursday .....	{ 9
Friday .....	{ 10
Saturday .....	{ 11
Monday.....	{ 13
Tuesday .....	{ 14
Wednesday .....	{ 15
Thursday .....	{ 16
Friday .....	{ 17
Saturday .....	{ 18
Monday.....	{ 20
Tuesday.....	{ 21
Wednesday .....	{ 22
Thursday .....	{ 23
Friday .....	{ 24
Saturday .....	{ 25
Monday.....	{ 27
Tuesday.....	{ 28
Wednesday.. Mar. 1	{ General Paper.
Thursday .....	{ 2
Friday .....	{ 3

Saturday .....	4	{	Petitions, Short Causes, and General Paper.	Saturday .....	19	{	Petitions, Short Causes, and General Paper.
Monday .....	6	{		Monday .....	20	{	
Tuesday .....	7	{	General Paper.	Tuesday .....	21	{	General Paper.
Wednesday .....	8	{		Wednesday .....	22	{	
Thursday .....	9	{	Fifth Seal.—Motions and General Paper.	Thursday .....	23	{	Seventh Seal.—Motions and General Paper.
Friday .....	10	{	General Paper.	Friday .....	24	{	General Paper.
Saturday .....	11	{	Petitions, Short Causes, and General Paper.	Saturday .....	25	{	Petitions, Short Causes, and General Paper.
Monday .....	13	{		Monday .....	27	{	
Tuesday .....	14	{	General Paper.	Tuesday .....	28	{	General Paper.
Wednesday .....	15	{		N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.			
Thursday .....	16	{	Sixth Seal.—Motions and General Paper.				
Friday .....	17	{	General Paper.				

CIRCUITS OF THE JUDGES.

(The Lord Chief Justice ERLE will remain in Town).

SPRING CIRCUITS, 1865.	NORFOLK.	HOMR.	MIDLAND.	WESTERN.	N. WALES.	S. WALES.	OXFORD.	NORTHERN.
	CJ Cockburn J. Williams	L C B Pollock B. Bramwell	B. Martin J. Willes	J. Crompton B. Channell	J. Byles	J. Blackburn	J. Keating B. Pigott	J. Mellor J. Shee
Monday, Feb. 20	.....	.....	.....	.....	.....	.....	.....	Appleby
Tuesday .... 21	.....	.....	.....	.....	.....	.....	.....	Carlisle
Saturday .... 25	.....	.....	.....	.....	.....	.....	Reading	Newcastle &
Monday .... 27	.....	.....	.....	Devises	.....	.....	.....	[Town
Tuesday .... 28	Oakham	.....	Warwick	.....	.....	.....	.....	.....
Wednes., Mar. 1	Leicester and	Hertford	.....	.....	.....	.....	Oxford	Durham
Thursday ... 2	[Borough	.....	.....	Winchester	.....	.....	.....	.....
Friday .... 3	.....	.....	.....	.....	.....	Haverfordw.	.....	.....
Saturday .... 4	.....	.....	Derby	.....	.....	[& Town	Worcester &	.....
Monday .... 6	Northampton.	Chelmsford	.....	.....	.....	.....	[City	Lancaster
Tuesday .... 7	.....	.....	.....	.....	.....	Cardigan	.....	.....
Wednesday... 8	.....	.....	.....	.....	Welchpool	.....	.....	.....
Thursday ... 9	Aylesbury	.....	Nottingham	Dorchester	.....	.....	Stafford	.....
Friday .... 10	.....	.....	[& Town	.....	.....	Carmarthen	.....	Manchester
Monday .... 13	Bedford	Maidstone	.....	Exeter & City	Bala	.....	.....	.....
Tuesday .... 14	.....	.....	Lincoln and	.....	.....	.....	.....	.....
Wednesday.. 15	.....	.....	[City	.....	.....	Swansea	.....	.....
Thursday ... 16	Huntingdon	.....	.....	.....	.....	.....	.....	.....
Friday .... 17	.....	.....	.....	.....	Ruthin	.....	.....	.....
Saturday ... 18	Cambridge	.....	York & City	.....	.....	.....	.....	.....
Monday .... 20	.....	Lewes	.....	Bodmin	.....	.....	Shrewsbury	.....
Wednesday.. 22	Bury St. Ed.	.....	.....	.....	Carnarvon	.....	.....	.....
Thursday ... 23	.....	.....	.....	.....	.....	.....	.....	Liverpool
Saturday ... 25	.....	.....	Leeds	Taunton	Beaumaris	.....	Hereford	.....
Monday .... 27	Norwich and	Kingston	.....	.....	.....	Brecon	.....	.....
Wednesday.. 29	[City	.....	.....	.....	Mold	Presteign	Monmouth	.....
Friday ..... 31	.....	.....	.....	Bristol	.....	.....	.....	.....
Saturd., April 1	.....	.....	.....	.....	Chester &	Chester &	Glouc. & City	.....
					[City	[City		

MARITIME INTERNATIONAL LAW.—The last of a course of lectures on this subject was delivered on Wednesday, in the hall of Lincoln's-inn, to the members of the Inns of Court, by Leone Levi, Esq., LL.D., Professor of Commercial Law at King's College, London; Sir Roundell Palmer, Q.C., her Majesty's Attorney-General, in the chair. The subject of the lecture was "Neutral Rights." After defining what is neutrality, the professor dwelt on the rights and duties of neutrals as regards trade and navigation, illustrating the bearings of the rule of 1756, and commenting on the law of nations prohibiting the carrying of contraband of war and selling of articles of war to belligerents in a neutral country. The Foreign Enlistment Act in force in this country and in the United States was carefully expounded, as well as the points involved in the dispute regarding The Alabama, The Alexandra, &c. The professor lamented the practice of contraband carriers and blockade runners dealing, as they did, against both the law of nations and muni-

cipal law. He shewed the great advantage of adopting the principle of "free ship, free goods," dwelt on the importance of preserving the immunity of neutral territory, and concluded with recapitulating the principal points of the previous lectures. At the conclusion, the Attorney-General moved a vote of thanks to the professor, both in the name of those who attended the lectures and of the Council of Legal Education. He said that, whatever difference of opinion there might be on the points that had formed the subjects of this course of lectures, it would not be doubted that it was a great benefit to have these important questions so well matured and discussed; and thanks were due to the professor for devoting so much learning and time in the elucidation of these subjects.

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## THE JURIST.

LONDON, FEBRUARY 11, 1865.

In a late article, containing a short sketch of the more important statutes passed during the last session of Parliament, we stated that many important bills had also been brought in, which, for lack of time, had not been proceeded with. To one of these bills we wish to draw our readers' attention, because of the importance of its subject matter, the alterations it contemplates, and the almost inevitable imperfections of its execution; and because, whilst on the one hand it is, therefore, desirable that this or some similar bill should be actively promoted; on the other, it is equally a matter of moment that such bill should be most critically examined as to its emendations, its omissions, and its possible blunders. The bill is intitled "A Bill to consolidate and amend the Acts regulating Procedure before Justices of the Peace out of Quarter Sessions;" and those who are at all conversant with the subject will at once perceive, how large a field is presented both for useful legislation and for legislative blundering. As it contains 145 sections, some of which contain a dozen (or even more) lengthy subdivisions, we cannot pretend to make more than a very cursory sketch of the general nature of the provisions which it contains; and we must leave to our readers themselves all critical examination.

It is divided into fourteen parts, and has three schedules of tables of fees, forms, and repealed statutes respectively. The first part relates to the jurisdiction and authority of justices, and contains provisions as to their power to act out of their jurisdiction; as to their jurisdiction in summary proceedings for offences on the boundaries of counties, during a journey, &c., and in respect of indictable offences; as to what shall be considered an interested justice; and as to the number of justices required to act. Some of these provisions are new, and some are made general, which formerly applied only to particular cases, but they call for no especial remark. The second part relates to the fees and duties of justices' clerks, and, on the whole, seems to be fair and reasonable. The third provides for the manner of preferring complaints and charges; and the most material clause is one which limits the time for preferring complaints within part 8 (as to summary proceedings), to six months, where there is no special limitation by act of Parliament, except in the case of non-payment of rates and taxes when the limitation is twelve months; and which defines the time from which the limitation is to run. Parts 4 and 5 relate to the methods by which the accused and witnesses may be compelled to attend, and by which the latter may be compelled to give evidence, and they contain many salutary provisions and amendments in these matters. The sixth part deals with the adjournment of cases, and allows the justices ample discretion to commit to prison, bail, or merely take the defendant's

promise to appear; one thing we do not, however, quite understand, viz. the object of the provision, that when bail is taken, the remand may be for a "shorter" time than eight days, and think it will lead to much misconstruction. In part 7, as to the place of, and proceedings at, the hearing, there are directions as to where petty sessions may be held; what things must be done in them; where they are to be considered an open court and where not, in both of which cases the defendant may have counsel or attorney; as to the committal, &c. for contempt; the proceedings, if perjury is committed; and the non-abatement of proceedings in case of the death of the complainant, or his removal if he be a constable. Parts 8, 9, and 10 respectively apply to the cases of summary jurisdiction, indictable offences where an indictment is eventually to be preferred, and indictable offences which are intended to be summarily disposed of. The provisions in each case are so extremely lengthy, that, much as we desire it, we shall be unable to point out the various important alterations made by them. In part 8 there is an elaborate provision as to the cases to which it shall apply; its object is really, as it appears, to apply to all cases not within the next two parts, but the provision, as drawn, seems likely to produce considerable difficulty. There are enactments also as to when a person may be proceeded against, although he has been illegally brought before the justices, and as to what is to be done when title, &c. comes in question. The whole proceedings at the hearing (in civil cases portions of the Common-law Procedure Act, 1854, are to apply), the manner of adjudication, method of punishment (alternative or otherwise), and appeal, are elaborately entered into; and the changes in these matters are very great, and will require considerable attention. Part 9 is very nearly identical with the present procedure, and we will only point out, that although by part 7 counsel or attorney are to be allowed to the accused, the terms of this part only provide for cross-examination by the accused himself. Part 10 is in substitution of the present Summary Procedure Act in Cases of Larceny; but besides the alteration in the clauses relating to procedure, it provides for an enormous extension of the summary jurisdiction in indictable offences;—where the offender is under sixteen, additional jurisdiction is given in almost every case in the nature of simple larceny, in certain embezzlements, false pretences, and receipts of property; and in every such case, although there has been a previous conviction (unless penal servitude is a consequence);—and where the offender is above sixteen, there is an additional jurisdiction given, both in the discretionary and optional cases. Parts 11, 12, and 13 deal with special sessions, warrants, and recognisances, and require attentive perusal. And part 14 repeals a number of acts, the most important of which are Jervis's acts, the Criminal Justice Act, the act as to the stating of cases by justices, and the portions of the Criminal Consolidation Acts which relate to proceedings at petty sessions; and it contains a number of miscellaneous provisions of greater or less importance.

This slight sketch will shew that we have not exag-

gerated the importance of the proposed addition to our statute-book, and the necessity of not allowing such addition to take place without the most critical examination, not merely of a parliamentary committee, but also of all justices of the peace, lawyers, and those of the general public who are conversant with petty sessional proceedings. And we hope that our readers will hold us justified in drawing their attention (if not already directed) to the bill, and in thus giving them the opportunity of considering the provisions for themselves, and of watching any proceedings which may take place in Parliament with respect to it.

Notwithstanding, as is obvious, we have no space, either for criticism of its provisions, or suggestions for its improvement, we cannot refrain, before concluding, in making one suggestion; viz. that, if possible, some definition should be laid down of what is a civil and what a criminal proceeding. At present it is very difficult to determine this matter, and it is very desirable to have some clear rule, as the methods of procedure in the two cases are so different.

### Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—In your impression of last Saturday, it is stated that, notwithstanding the refusal of Gray's Inn to join in the scheme originated by Mr. Daniel, and adopted by a majority of the bar committee on law reporting, the Benchers of Lincoln's Inn will proceed on the 15th instant, to *elect two members of the Council under rule 1*. It is a proverbial saying, "*Quem Deus vult perdere, prius dementat*," and it does seem sheer infatuation on the part of the advocates of this scheme, that they are unable to see that the Council of rule 1 is practically defeated, and that, in order that the resolution of the Benchers should have had any sensible meaning, the *indefinite* article, in connexion with the word "Council" ought to have been used; for what scheme is it that the united Inns of the Inner Temple, Middle Temple, and Lincoln's Inn propose to carry out? Certainly not that approved at the last meeting of the Bar, since, according to that scheme, the Honourable Society of Gray's Inn were to appoint one member of the Council. Is it not most irregular, if not indecorous, on the part of the Benchers of Lincoln's Inn, to attempt to proceed further in this matter, without submitting to a general meeting of the Bar the grave and deliberate decision of Gray's Inn? It would, indeed, be an extraordinary act of the Legislature, if, as rule 4 of the scheme suggests, as to the constitution of the Council originally contemplated, any such body, assuming to represent the Inns of Court, but without any representative from Gray's Inn, should be "incorporated by act of Parliament or charter!" The Legislature will, very probably, interfere, but not for the purpose of sustaining a project that is not an expression of the unanimous sentiments of the Inns of Court. I should regret to think that any Government would condescend to purchase for their Lord Chancellor, or that his Lordship would accept, the right of appointing two members of the proposed Council, as is suggested in rule 25, by and in consideration of the loan of the first moiety of the salaries of the editors and reporters. If the Government are to be repaid within the year (a repayment

which must take place, or the editors and reporters will never receive the second moiety of their salaries), why are they to inherit this privilege? On the other hand, if the Consolidated Fund, or in other words, the public generally, must subscribe and lose this amount, what corresponding advantage is derived from sending two members to this mysterious Council which presides over another *unauthorised* series of law reports? It is worthy of remark, as an evidence of the low degree of confidence which the projectors themselves entertain, with reference to the ultimate prospects of their undertaking, that it must be the Government or the printers and publishers, that incur the risk of the payment of the first moieties of the salaries in question. Whatever the scheme asks or expects the Inns of Court to guarantee, it shrinks altogether from suggesting a joint responsibility on their behalf exceeding the sum of 500*l.* annually. If Mr. Daniel persist in launching his vessel under such inauspicious portents, those who embark with him must have very sanguine temperaments; in fact, his *three hundred* subscribers (if the number be such) must accomplish as great feats as their famed predecessors of classic notoriety at Thermopylae. An arithmetical deficit is a difficult matter to handle; argue how we may, fifteen hundred guineas are not ten thousand like glittering coins; nor are the confidence and approval of a few the confidence and approval of the many. Meanwhile, the judges, as a body, remain quite impassive, and even insensible, to the angry billows that roll around their judicial seats. The nearest approach, as I believe, to anything like judicial action has been made by Sir J. Stuart, V. C., who lately refused to follow a case that was cited from "THE JURIST," because it was not in the regular reports, and counsel had not "compared it with the record;" but the Vice-Chancellor, somewhat incongruously, qualified this proceeding by stating that he, for his part, did not join in the general outcry against the irregular reports, as he considered them useful in suggesting inquiry;—in fact, Sir, if I may presume to explain the meaning of his Honor by a figurative expression—you are allowed to hunt the wary fox "precedent," but the regulars must have his brush. The Bar, I fear, is in a lamentable condition, in connexion with the subject of reporting, for the remedy that is suggested reveals the lower depths to which we have fallen. It appears to be impossible, if Mr. Daniel rightly enunciates our sentiments, to say, fairly and plainly, to a number of well-meaning gentlemen who love reporting, "We do not want you, and will buy you out of the field of competition;" but cloudy visions of compensation out of imaginary funds are suffered to float agreeably before the mental eye of the irregulars, whilst the regular reporters are propitiated by the offer of one moiety of salaries which are still inadequate, and by the promise of the remaining moiety after payment of all expenses, the guaranteed 500*l.*, and the loan, whether obtained from the Government or the printers and publishers. It is self-evident that the scheme is wholly constructed on a wrong basis. Remove competition by a competent authority, and any series of reports *must* succeed; but the bar committee, or those members of it that approve of the scheme expect by its success to exclude competition—the inverse of the process I have mentioned, and a principle of action most unlikely to answer. Moreover, as Mr. Daniel publicly stated at the last general meeting of the Bar, and even boasted, that his scheme was strictly and simply *commercial*, and by no means repudiated that imputation, I trust sincerely that the event will prove that a scheme so constituted does not rest upon such a footing as will gain for it the adherence of the members of the bar generally, who, while they cannot but see the evils of the present

unrestricted mode of reporting, are not unmindful of the hard-worked and ill-paid votaries, or rather victims, thereof, and are not disposed by a side-wind, as it were, or, by means of a self-constituted monopoly, unauthorised by the Legislature, to deprive any of the existing reporters, regular or irregular, without compensation, of the inadequate earnings of much patient industry.

Your obedient servant,  
Rolls Chambers, Chancery-lane, G. L.  
Feb. 7, 1865.

[It is well that the objection to the late resolution of Lincoln's Inn, which we have heard privately expressed, should be stated publicly, and disposed of. If the history of the vote of want of confidence, passed at Gray's Inn, were explained, it would probably not be found worthy of so much respect as in the abstract may appear to be due to it; but taking it at the highest estimate, it certainly cannot justify the promoters of the bar committee scheme in abandoning the undertaking which has been intrusted to them. The Bar has unmistakeably expressed its desire and determination to have an amendment of the existing system by some such means as that proposed by the committee, under the sanction and guidance of the four Inns of Court, and the Incorporated Law Society, if possible; and certainly it does not desire or intend that the attempt should be defeated, merely by the opposition or inertia of the most insignificant of those bodies, to whom, in any event, not more than a ninth voice was proposed to be conceded.]

## EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

HILARY TERM, 1865.

### INTERMEDIATE EXAMINATION.

THE Examiners reported that the following gentlemen, whose names are arranged in alphabetical order, have passed the intermediate examination with distinction:—

Francis Henry Kendall, aged nineteen, articled to Mr. William Venn, of London.

Thomas John Webb, aged nineteen, articled to Messrs. Partridge & Woodward, of Birmingham.

The number of candidates examined in this term was 77; of these, 65 were passed, and 12 postponed.

By order of the Council,  
E. W. WILLIAMSON, Secretary.

### FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

I.

1. John Nalder, aged twenty-one, who served his clerkship to Mr. Frank Isaac Nalder, of Shepton Mallett.

2. William Henry Hodson, aged twenty-one, who served his clerkship to Messrs. Nowell & Priestley, of Barton-upon-Humber, and Mr. William Hunt, of London.

3. John Reginald Lane, aged twenty-four, who served his clerkship to Mr. John Lane, of Stratford-upon-Avon, and Messrs. Routh, Rowdon, & Stacey, of London.

II.

4. William Plumer Keary, aged twenty-two, who

served his clerkship to Messrs. Mee, Burnaby, & Denman, of East Retford.

5. William Wright Kirkman, aged twenty-two, who served his clerkship to Messrs. Beaver, Darwell, & Taylor, of Manchester.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—  
To Mr. Nalder, the prize of the Honourable Society of Clifford's Inn.

To Mr. Hodson, the prize of the Honourable Society of Clement's Inn.

To Mr. Lane, one of the prizes of the Incorporated Law Society.

To Mr. Keary, one of the prizes of the Incorporated Law Society.

To Mr. Kirkman, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Charles Bell, aged twenty-one, who served his clerkship to Mr. Nathaniel Cobham, of Ware.

Arthur Bird, aged twenty-one, who served his clerkship to Messrs. Bowker & Peake, of London.

William Robert Brooks, aged twenty-three, who served his clerkship to Messrs. Thomson & Son, of London.

James William Clabburn, aged twenty-one, who served his clerkship to Mr. Thomas Brightwell, jun., of Norwich, and Mr. Charles Edward Abbott, of London.

Thomas Henry Lambert, aged twenty-one, who served his clerkship to Messrs. J. & W. Galsworthy, of London, and Mr. Mark Shephard, of London.

Richard Bailey Pugh, aged twenty-three, who served his clerkship to Mr. Richard Pugh, of Watford, and Mr. Henry Drake, of London.

George William Thomas, aged twenty-one, who served his clerkship to Messrs. Rice & Wighton, of Boston, and Messrs. Scott & Co., of London.

Robert Trimmer, aged twenty-one, who served his clerkship to Messrs. Hobbs & Collins, of Reading, and Messrs. Jenkins & Abbott, of London.

William Wood, jun., aged twenty-two, who served his clerkship to Mr. James Roberts, of Manchester.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes or certificates of merit if they had not been above the age of twenty-six:—

1. Ambrose Gibbons Ditton.
2. Horatio Seymour Warwick.
3. William Groves, B.A.

The number of candidates examined in this term was 139; of these 120 were passed, and 19 postponed.

By order of the Council,  
E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,  
London, Feb. 1, 1865.

BAR PROMOTIONS.—It is stated that Mr. Joseph Browne, of the Home Circuit; Mr. Webster, Sir Thomas Philips, and Mr. Milward, of the Northern Circuit; and Mr. Hardinge Giffard, of the South Wales Circuit, are to be raised to the rank of Queen's Counsel; and that Mr. Colley Robinson, of the Home Circuit, is to take the coif.

## Court Papers.

EQUITY CAUSE LISTS, SITTINGS AFTER  
HILARY TERM, 1865.

\* \* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

*Before the LORD CHANCELLOR and the LORDS JUSTICES.*

## APPEALS.

*Att.-Gen. v. Master and Co-Brethren of the Hospital of St. John the Baptist, Bedford (R., Nov. 18)*  
*Collinson v. White (S., Jan. 20)*  
*Holberton v. Clement (S., Jan. 20)*  
*Hamner v. Chance (W., Jan. 25) L. C.*  
*Jones v. Rees (K., Jan. 27)*

*Wakefield v. Llanely Railway and Dock Co. (R., Jan. 27)*

## CAUSES.

*Baxendale v. West Midland Railway Co. (M D) L. C.*  
*Baxendale v. Great Western Railway Co. (M D) L. C.*  
*Att.-Gen. v. Chambers } (F*  
*Att.-Gen. v. Rees } C)*  
*Simpson v. Holiday (Cause) L. C.*  
*Meux v. Bruce (M D).*

*Before the Right Hon. the MASTER of the ROLLS.*

## CAUSES, &amp;c.

*Berdoo v. Dawson (Cause, part heard)*  
*Vigor v. Salmon (F C)*  
*Davies v. Otte (M D)*  
*Samble v. Wilson (M D)*  
*Kirkham v. Mugeridge, Knt. (M D)*  
*Smith v. Wilson (M D)*  
*Butcher v. Sherwood (M D)*  
*Geale v. Hockley (M D, Ptn)*  
*Dickson v. Adams (F C)*  
*Lees v. Lees (F C)*  
*Nason v. Marriott (F C)*  
*Bruce v. Morrison } (Cause)*  
*King v. Morrison } (Cause)*  
*King v. Franchlyn }*  
*Ormerod v. Roston (F C)*  
*Howard v. Earl of Shrewsbury (Cause)*  
*Ridley v. Ridley (M D)*  
*Chadwick v. Turner (M D)*  
*Pomfret v. Plucknett (M D, Ptn)*  
*Beresford v. Conyers (M D)*  
*Batchelor v. Morley (M D)*  
*Cheesman v. Price (M D)*  
*Pink v. Aburrow (M D)*  
*Plucknett v. Pomfret (M D, Mtn)*  
*Anderton v. Anderton (M D)*  
*D'Huart v. Harkness (M D)*  
*Quicks v. Floud (M D)*  
*Turner v. Mirfield (M D)*  
*Chambers v. Crabbe (M D)*  
*Kills v. Griffith (M D)*  
*Payne v. Hallstone (M D)*  
*Sercombe v. Sanders (M D)*  
*Thomas v. Chorley (M D)*  
*Tidswell v. Tidswell (M D)*  
*Willis v. Willis (M D)*  
*Robinson v. Clarke (Cause, Witnesses)*  
*Burke v. Rogerson (M D)*  
*Heywood, Bart., v. Heywood (M D)*  
*Hole v. Davies (M D)*  
*Tanswell v. Schurrah (M D)*

*Lucas v. Clarke (F C)*  
*Willis v. Willis (Cause)*  
*Bank of London v. Mugeridge (M D)*  
*Ingle v. Partridge (Cause, Witnesses) Feb. 14*  
*Webster v. Donaldson (M D)*  
*Young v. Gill (M D)*  
*Conyers v. Beresford (M D)*  
*Bedford v. Bedford (F C)*  
*In re Knight } (F C, from*  
*Lane v. Bamfield } Ch., Sums.*  
*to vary)*  
*Richards v. Hocking (M D)*  
*Evans v. Angell (F C)*  
*Disney v. Parker (M D)*  
*Crawley v. Garrett (M D)*  
*Sandlands v. Mathison (F C)*  
*Evans v. Stilwell (M D)*  
*Taunton v. Baxter (M D)*  
*Lowndes v. Hulton (M D)*  
*Wombwell v. Cookney (F C)*  
*Moone v. Moone (M D)*  
*Hall v. Winder (M D)*  
*Tresidder v. Deane (F C)*  
*Leach v. Leach (M D)*  
*Disney v. Crosse (M D)*  
*Galloway v. Mayor, &c. of London (M D)*  
*Fox v. Gurnell (M D)*  
*Hughes v. Hughes (M D)*  
*Heron v. Marshall (Cause)*  
*Tibbs v. Elliott (M D)*  
*Nunn v. Fabian (Cause)*  
*Marsh v. Heath (M D)*  
*Medworth v. Watson (F C)*  
*Mends v. Esdalle (F C)*  
*Thorley v. Hancock (M D)*  
*Smith v. Davis } (F C)*  
*Jones v. Davis } (F C)*  
*Jeffery v. Jeffery (F C)*  
*Stewart v. Stewart (F C)*  
*Kent v. Kent (M D)*  
*Nunn v. D'Albuquerque (M D).*

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY,*  
CAUSES, &c.

*Chambers v. Manchester and Milford Railway Co. (D)*  
*Same v. Same (D)*  
*Smart v. Hawksworth (M D)*  
*Millard v. Ellyett (M D, part heard)*  
*Earl of Eglinton v. Lamb, Bart. (M D)*  
*Earl of Eglinton v. Lamb, Bart. (M D)*  
*Jenkins v. Lemon (Cause, Witnesses)*  
*Oakden v. Pike (M D)*  
*Tomlinson v. Rutter (M D)*  
*Lovegrove v. Heath (M D)*  
*Gant v. Heales (M D)*  
*Morgan v. Morgan (M D)*  
*Gillett v. Gane (M D)*  
*Gataker v. Reynardson (Cau.)*  
*Barker v. Pelle (M D)*  
*Fitch v. Cutts (Cause)*  
*Sharplin v. Symons (M D)*  
*Cooke v. Hathway (Cause)*  
*Gentry v. Gentry (Sp C)*  
*Dakers v. Lilburn (M D)*  
*Smith v. Meadows (Cause)*  
*Travis v. Illingworth (M D)*  
*M'Clymont v. Ray (M D)*  
*London Monetary Advance, &c. Co. (Limited) v. Brown (Cause, P C)*  
*Hosken v. Sincok (M D)*  
*Paine v. Brown (Cause)*  
*Winterbottom v. Storey (F C)*  
*Armistage v. Armistage (F C)*  
*Hutton v. Hutton (F C)*  
*Hollis v. Bulpett (F C)*  
*Ford v. Marston (Cause)*  
*Gutteridge v. Fletcher (M D)*  
*Wilson v. Kempe (M D)*  
*Briggs v. Griffiths (M D)*  
*Taylor v. Milnes (M D)*  
*Ponting v. Butler (F C, Summons to vary)*  
*Robinson v. Evans (F C)*  
*Maxwell v. Mackenzie (Cau.)*  
*Maxwell v. Wright (otherwise Mackenzie) (Cause)*

*Cooper v. Tharp (Cause)*  
*Tomkinson v. Naden (M D)*  
*Painter v. Ford (Cause)*  
*Marquis of Downshire v. Smith (M D)*  
*Leaton v. Armstrong (F C, Summons to vary)*  
*Shanks v. Dickinson (M D)*  
*Phillips v. James (M D)*  
*Fitzgibbon v. Dillon (M D)*  
*Curriers' Co. v. Corbett (M D)*  
*Grosvenor v. Smallwood (M D)*  
*Towns v. Wentworth (M D)*  
*Ivimey v. Stocker (M D)*  
*Parsons v. Parsons (M D)*  
*Pole v. De la Pole, Bart. (M D)*  
*Chapman v. Finch (M D)*  
*Waterhouse v. Farlow (M D)*  
*Palster v. Gardner (F C)*  
*Bell v. Wilson (Cause) } (F C, from*  
*In re Taylor } Chambers,*  
*Frayne v. Taylor } Summons*  
*to vary)*  
*Beecher v. Major (M D)*  
*Patch v. Shore (F C)*  
*Walsh v. Jupp (M D)*  
*Taylor v. Taylor (Sp C)*  
*Byers v. Dalton (M D)*  
*Byers v. Dalton (M D)*  
*Beardsley v. Benyon (Sp C)*  
*Winkworth v. Allen (M D)*  
*Att.-Gen. v. St. John's Hospital, Bath (M D)*  
*Hartlepool Gas and Water Co. v. West Hartlepool Harbour and Railway Co. (M D)*  
*Pentney v. Lynn Paving Commissioners (M D)*  
*Norval v. Pascoe } (F C)*  
*Thomas v. Pascoe } (F C)*  
*Stockport District Waterworks Co. v. Jowett (M D)*  
*Turner v. Sowdon (M D)*  
*Dunsany v. Dunsany (F C).*

*Before the Vice-Chancellor Sir JOHN STUART.*

## CAUSES, &amp;c.

*Cooper v. Williamson (Pl)*  
*Tundley v. Malpas (Old E)*  
*Makepeace v. Rogers (D)*  
*Brown v. Henwood (D)*  
*Tee v. Bridger (Cause) Feb. 17*  
*M'Intosh v. Great Western Railway Co. (F C)*  
*Defries v. Smith (F C, and Summons)*  
*Bayley v. Williams (Cause)*  
*Swanston v. Smethurst (Cau., part heard)*  
*In re Hall } (F C)*  
*Robinson v. Latham } (F C)*  
*Bayley Worthington v. Williamson (M D)*  
*Dover v. Buck (Cause)*  
*Langdon v. Blake (M D)*  
*Burrows v. Langley (Cause)*  
*Cust v. Middleton (F C, Ptn)*  
*Brideoake v. Lees (M D)*  
*Jones v. Dixon (F C, Summons, part heard)*  
*Austin v. Cantle (F C)*  
*Fowler v. Haynes (Cause)*  
*Forman v. Harvey (F C)*

*Cooke v. Benbow (F C, Sum.)*  
*Joseph v. Metropolitan Railway Co. (M D)*  
*Williamson v. Shinton (M D) Feb. 24*  
*Hunter v. General Co. of Italian Irrigation Canals (Cause, Canal) (M D)*  
*Parker v. Lee (M D)*  
*Taylor v. Kay (M D)*  
*Willoughby v. Brideoake (M D)*  
*Hall v. Waterhouse (M D)*  
*Neve v. Cust (F C)*  
*Stanhope v. Earl of Harrington (M D)*  
*Smith v. Thomas (M D)*  
*Yardley v. Broughton (M D)*  
*Symonds v. Creasy (F C)*  
*Edwards Wood v. Baldwin (F C)*  
*Ensley v. Ensley (M D)*  
*Croft v. Graham (F C, Sum.)*  
*Davey v. Wietlesbach (M D)*  
*In re Stubb's Estate } (F C)*  
*Stubbs v. Marsh }*

Rayson v. Watson (F C)  
 Warland v. Gooby (M D)  
 Wood v. Wadham (M D)  
 King v. Brown (M D)  
 Rawley v. Skivington (M D)  
 Upperton v. Upperton (M D)  
 Rhodes v. Bate (Cause)  
 Garrett v. Adams (Cause, P C)  
 Ladgater v. Horley (Cause)  
 Rapley v. Holbrook (M D)  
 Haig v. Gwyther (M D)  
 Welch v. Phillips (M D)  
 Fowler v. Druce (Cause)  
 Thomas v. Croes (F C)  
 Beynon v. Morris (M D)  
 Martyn v. Parnell (Cause)  
 Williams v. Caslon (M D)  
 Jenkins v. Parry (Cause, Summons)  
 Lingen v. Jones (F C)  
 John v. Lloyd (M D)  
 Oliver v. Hughes (Cause)  
 Paul v. Buggs (Cause)  
 Maughan v. Larchin (M D)  
 Wormald v. Maitland (Cause)  
 Foster v. Oxenham (M D)  
 Daniel v. Towne (M D)  
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 Wriford v. Wriford (M D)  
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The Queen has been pleased, by letters-patent under the Great Seal of the United Kingdom, to give and grant the office of one of the Justices of the Court of Common Pleas to Montague Edward Smith, Serjeant-at-Law, on the resignation of Sir Edward Vaughan Williams, Knt., late one of the Justices of the said Court. His Lordship took his seat on the bench for the first time on Wednesday last.

THE CHURCH AND THE BAR.—Some weeks since a paragraph appeared in the *Times*, stating that a question of considerable importance to members both of the Church and the Bar was under the consideration of the Benchers of the Inner Temple. It was, whether a duly ordained clergyman of the Church of England was eligible to be called to the degree of barrister-at-law, and to practice in our courts of justice. At the time the name of the clergyman whose proceedings had given rise to the inquiry was not mentioned; but there will be no impropriety in now stating that the gentleman referred to is the Rev. F. H. Lascelles, M.A., formerly a beneficed clergyman of the Church of England, and a near connexion of the family of the Earl of Harewood. Mr. Lascelles was ordained about eighteen years ago, and served several offices in the Church. Becoming dissatisfied with his ecclesiastical position, he gave up, as far as he was able to do so by law, his connexion as a clergyman with the Church,

and was admitted, on the recommendation of Mr. Locke, Q.C., M.P. for Southwark, a student of the Inner Temple. He kept the usual terms, and about two years ago was called to the Bar, the Benchers being at the time unaware that he had taken holy orders. When their attention was directed to the matter, the Benchers instituted an inquiry, and called to their assistance the Benchers of the other courts. The following gentlemen were appointed to institute the necessary inquiries:—Lincoln's Inn: Mr. Loftus T. Wigram (treasurer), Sir E. B. Ryan, Mr. E. B. Denison, Q.C., Mr. Bazalgette, Q.C., Mr. R. Amphlett, Q.C., and Dr. Travers Twiss. Inner Temple: Mr. K. Macanlay, Q.C., Dr. Lushington, Mr. J. A. Roebuck, Mr. R. Gurney, Q.C., Mr. R. Ingham, Q.C., and Mr. Samuel Warren, Q.C. Middle Temple: Mr. H. R. Bagshawe, Q.C. (treasurer), Sir W. T. Alexander, Q.C., Mr. Montague Smith, Q.C., Sir R. J. Phillimore, the Queen's Advocate, Mr. J. D. Coleridge, Q.C., and Mr. Greenwood, Q.C. Gray's Inn: Mr. W. Wilde (treasurer), Mr. J. W. Huddleston, Q.C., Mr. R. Lush, Q.C., Mr. H. Manisty, Q.C., Mr. W. Hindmarch, Q.C., and Mr. J. A. Stephens, Q.C. These gentlemen, having carefully inquired into the matter, held their last meeting on Monday evening, when they came to a decision, Dr. Lushington and Mr. M. Smith (the new judge) declining, on account of their position, to express an opinion, it was decided, on a division, that ordained clergymen should henceforth be eligible for call to the Bar, and Mr. Lascelles, consequently, may continue to practise. It is understood that the main argument of the minority, and that chiefly relied upon by Sir R. Phillimore, Mr. Coleridge, and Mr. Samuel Warren, was grounded on the 76th canon, which declares, that "no man being admitted a deacon or minister shall from thenceforth voluntarily relinquish the same, nor afterwards use himself as a layman, upon pain of excommunication." On the other hand, it was argued, that the exclusiveness of this canon is to a great extent repealed by the act passed in the second year of her Majesty's reign, called the Pluralities Act. In that statute, brought in and passed by the heads of the Church, there are several enactments sanctioning clergymen occupying themselves in secular pursuits, and among others the directors and managers of insurance and other companies. Many clergymen have complained, during the last few years, that they have been unable to enter any other profession, on becoming dissatisfied with their position in the Church. Such difficulties are now to some extent removed; and probably, as soon as the Benchers' decision becomes known, there will be many applications to the Inns of Court for admission from clergymen who are anxious to aspire to legal honours. At the present time there are some clergymen who are practising at the Bar, but these are gentlemen who were called before they were ordained. Mr. Lascelles is the first barrister, as far as present inquiries shew, who has been called after taking holy orders.

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## N O T I C E.

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## THE JURIST.

LONDON, FEBRUARY 18, 1865.

THE recent judgment of the Exchequer Chamber, in the case of *Lee and Others v. Jones* (11 Jur., N. S., part 1, p. 81), well deserves consideration. The facts shortly were, that one Packer had sold coals for the plaintiffs on commission, and that Sarah Tinson had entered into a guarantee for him to the extent of 300*l*. In this state of facts Packer became indebted to the plaintiffs in the sum of 1272*l*., and the plaintiffs required that he should give further security. Whereupon the defendants were induced by Packer to give a guarantee to the plaintiffs, which they gave in entire ignorance of the fact, that Packer was already so largely indebted to the plaintiffs. Packer was subsequently dismissed, and the plaintiffs called upon the defendants for the amount guaranteed by them. The claim was resisted, on the ground that the plaintiffs had, at the time the defendants gave their guarantee, fraudulently concealed the fact that Packer was then largely in their debt.

The argument for the plaintiffs was based upon the decision in the case of *The North British Insurance Company v. Lloyd* (10 Exch. 523), where it was held, that a creditor who takes a guarantee is not bound to disclose to the surety every fact within his own knowledge, which might affect the surety, or his willingness to enter into the contract, and that such non-communication will not, in the absence of actual fraud, affect the validity of the guarantee; and, therefore, that the plaintiffs were not bound to inform the defendants of their previous indebtedness of Packer; that the rule, that all material circumstances known to the insured must be communicated to the insurer, is peculiar to contracts of insurances, and does not extend to contracts of guarantee; and that it is for the surety to ask such questions as he thinks proper before he enters into the contract. Reliance being placed on the case of *Railton v. Matthews* (12 Cl. & Fin. 109), where Lord Campbell says, "Unless questions be particularly put by the surety to gain the information, I hold that it is quite unnecessary for the creditor to whom the suretyship is to be given, to make any such disclosure."

For the defendants it was argued, that the non-communication of the fact of Packer's indebtedness was a fraudulent concealment of a fact which it was material for the defendants to know. And the case of *Railton v. Matthews* (10 Cl. & Fin. 937) was relied upon, in which Lord Campbell held, "that the liability of a surety must depend upon the situation in which he is placed, upon the knowledge which is communicated to him of the facts of the case, and not upon that which was passing in the mind of the other party, or the motive of the other party."

The majority of the Court held, that there was evidence of a fraudulent concealment by the plaintiffs of the fact of Packer's indebtedness; and, therefore, that the defendants were entitled to retain the ver-

dict which had been found for them. We should have stated, that the plaintiffs had no personal communication with the defendants on the subject of the guarantee, but sent it to him for execution by an agent, who had no authority from them to communicate, and did not communicate, Packer's condition. The agent brought the draft guarantee, the guarantee of Mrs. Tinson, and the original agreement between Packer and the plaintiffs, and told the defendants that their guarantee was to be supplemental to Mrs. Tinson's. The majority of the Court were of opinion that the plaintiffs would naturally infer from these documents, that Mrs. Tinson's guarantee, as well as their own, was applicable to new dealings, and not to wipe off the balance already due from Packer.

Now, the case before the Court might be distinguished from *The North British Insurance Company v. Lloyd*, on the ground, that in the latter there was only non-communication of a fact; whereas, in the former, the sending these documents to the defendants was a positive act of fraud; but the judgments do not clearly appear to rest on this distinction; and, in fact, according to the judgment of Blackburn, J., it will be extremely unsafe for any creditor, who requires a guarantee, not to make to the surety the fullest disclosure of the position of the debtor. He says, "I think it must in every case depend upon the nature of the transaction, whether the fact not disclosed is such that it is *impliedly* represented not to exist; and that must generally be a question of fact proper for a jury." There is, therefore, no settled rule of law on the point; in all cases it is for a jury to say whether or not a particular fact should have been communicated to the surety, and whether its suppression was such a concealment as to amount to moral fraud; and thus no creditor can be certain that his guarantee is sound, unless he has communicated everything which he knows about the debtor's circumstances.

The dissentient judges were of opinion that it is for the surety to ask questions, not for the creditor to volunteer information; but at present this is not the law.

We find in this, as in many other cases, judges differing entirely as to the inference to be drawn from facts, and in this particular case, not from a mass of complicated facts, but from very few. If men trained for many years to habits of reasoning, and accustomed to deal with facts, and to present them to be dealt with by juries, can thus differ, it is only to be expected that juries will be more likely to do so, and, therefore, that it is impossible to anticipate what conclusions they will draw from a given state of facts; whether they will consider the non-communication of a fact by a creditor was immaterial, or so important as to amount to fraudulent concealment.

The safest course, therefore, which, after the judgment in *Lee v. Jones*, a creditor can pursue when he requires a guarantee, is to exercise uberrimam fidem towards the surety, and in fact, although it is said that the rule which applies to policies of insurance does not apply to contracts of guarantee, still to act as if he were bound by that rule.

THE Queen's speech, as had been anticipated, promises no measure, the introduction of which is likely to cause a trial of party strength, or to shorten the last session of an expiring Parliament, and there would, therefore, appear to be time for the introduction of useful, social, and legal reforms.

In a recent article in this Journal it was suggested that Parliament might, in such a time of quietness, devote its attention to an amendment of the bankruptcy and patent laws, and of the procedure in the Divorce Court. But the speech does not hint at any change in the law of bankruptcy, although there is the common complaint of its defects, nor is a word said in it with reference to the Divorce Court. We can easily understand that there are great difficulties in dealing with the law of divorce, and, perhaps, there is not yet that amount of complaint with regard to it which forces a measure upon the attention of the Legislature; but, as to the Bankruptcy Act, there can be no doubt that great alterations are required, and it is matter of surprise that no notice should have been taken of it. We are glad, however, to see that Mr. Moffatt is taking the matter up, and we trust that his endeavours will be aided at least by the legal members of Parliament.

The Attorney-General's proposed measure for the erection of the new law courts is, no doubt, a very desirable proceeding, but there can be nothing in it which can occupy a session, or prevent the Government introducing other measures of legal reform. Unless it is a thing impossible to frame a sound and just law of bankruptcy, it is a discredit to the Legislature that the law should remain as it now is, carped at and abused by everybody who has to come in contact with it.

Since we wrote the above remarks, we find, from the reports of the proceedings in the House of Lords on Thursday evening, that Lord Westbury is at last sensible of some of the defects in his Bankruptcy Act, but he takes no notice of the numerous decisions in which trust deeds have been held invalid, and, in fact, appears to think that this part of the act has worked well. As, however, Mr. Moffatt seems also to be determined to act vigorously in the matter, it is to be hoped that something will be done this session to effect the amendments so urgently required,

#### PROBATE DUTY PAYABLE IN RESPECT OF LEASEHOLDS IN MORTGAGE.

THE following paper, which was read by Mr. H. Reynolds, solicitor, of Birmingham, at a meeting of the Metropolitan and Provincial Law Association, held there, has reference to questions of sufficient practical importance to justify us in placing it before our readers in extenso. We are informed, that where the point suggested by Mr. Reynolds is taken, the Inland Revenue Office give way; but that if no notice is taken, the office collect the revenue, to which, by their own act in other cases, they admit they have no right.

It is enacted by the 55 Geo. 3, c. 184, s. 38, that "the estate and effects of the deceased" shall be valued for the purposes of probate, "without deducting anything on account of the debts due and owing from the deceased;" and by the 51st section it is provided, that a return of probate duty shall be made in respect of debts, if paid and claimed within three years after the date of probate.

Since this enactment the practice has been, and is,

to pay probate duty on the *gross* value of the personal estate and effects, without deducting anything in respect of debts owing. So where the estate, or a portion of the estate, consists of leaseholds *subject to a mortgage*, duty is paid in respect of the full value of the leaseholds, without deducting therefrom the amount of mortgage money, on the ground, that being a debt owing from the deceased, and as such "payable by law out of his or her personal or movable estate," no such deduction should be made. The practice in this case, I think, is wrong, and not borne out by the requirements of the statute; which provides, that the "estate and effects of the deceased" shall be valued, without deducting anything on account of debts. If the deceased had leaseholds *in mortgage*, his estate in such leaseholds would be a diminished estate, an equity of redemption, and *as such* should be valued. If I am right in this view, and I think I am, it is of importance to the public at large, that the practice be altered; as, irrespective of the loss arising from the payment of duty, the repayment of which cannot be claimed except within the time provided by the statute, we all know the great trouble and expense attending upon obtaining repayment, even in ordinary cases. Hence, it commonly happens, where the amount repayable is within 10%, no claim is made.

Without practical experience or consideration, it would not appear, that paying duty on the gross value is of any great practical moment, seeing that return of duty in respect of debts paid can be obtained within the three years; and in ordinary cases it is not of great moment, the only drawback being the professional trouble and expense attendant, which, however, are of some moment. But in the case put, i. e. where the estate, or portion of the estate, consists of leaseholds in mortgage, it is very different, and the extra amount of duty is frequently lost, as in numerous instances the mortgage money is not paid *within the three years*, and, therefore, no repayment obtained; and it unfortunately happens that these are the cases in which the loss of the money is most felt. Instance the following, which occurred in my own practice:—A. B. died in the year 1852, intestate, leaving a widow and children. The *gross* value of his estate was estimated, for purposes of administration, as being over 2000*l.* and under the value of 3000*l.* There were leaseholds, valued at about 2000*l.*, but in mortgage for 1700*l.*, so that the net value (i. e. the equity of redemption) was reduced to 300*l.*; and this, with the other portions of the estate (being under 150*l.*) made the total net value under 450*l.*, so that the figures controlling the payment of duty stood thus:—

Gross value, under 3000 <i>l.</i> , duty . . .	£75 0 0
Net value, under 450 <i>l.</i> . . .	11 0 0
Difference . . .	£64 0 0

Which, if paid, would have been lost, as the leaseholds could not be realised, nor mortgage money paid off within the three years.

This, comparatively, is an uncommon case, but a similar state of things is of frequent occurrence. And loss is of daily occurrence in ordinary cases, where claim for return of duty is not made within the three years. The following is illustrative:—

C. D. died in 1858, leaving a will. The gross value of his estate was estimated, for purposes of probate, as over 3000*l.* and under the value of 4000*l.* There were leaseholds valued at 2700*l.*, but in mortgage for 1300*l.*, leaving the net value, i. e. the equity of redemption, at 1400*l.*; and this, with the other portions of the estate, made the total value under 3000*l.*; so that the figures controlling the payment of duty stood thus:—

Gross value, under 4000 <i>l.</i> , duty . . .	£60 0 0
Net value, under 3000 <i>l.</i> , duty . . .	50 0 0
Difference . . .	£10 0 0

In this case, if duty had been paid on the gross value, the difference would have been lost, as no payment was made so as to entitle to claim for repayment. It was not convenient to the parties interested to pay off the incumbrances, and the amounts repayable being but 10*l.*, a transfer of the security was not resorted to. Every solicitor in his own practice meets with many such cases.

In both of the above cases I paid the duty on the net values, and therefore no loss was sustained. I have adopted this mode of procedure for twelve or fifteen years past, without any official exception being taken, otherwise than as appears below, the residuary returns having been passed, and stamped in every case. No concealment was resorted to, the valuations having been so framed as to shew the value of the leaseholds unincumbered, the amount of the mortgage incumbrance deducted, and the balance stated as the value of the equity of redemption; and copies of these valuations were invariably forwarded to the commissioners, with the residuary returns. It will occur to every one considering the subject, whether an executor adopting this course is justified in deposing that the "estate and effects" are under the value of a certain sum, "without deducting anything on account of the debts of deceased." The "estate" only of the deceased is to be valued; and when an equity of redemption, or other reduced estate, the value of this estate can only be ascertained by getting at the value of the legal or other interest by which it is diminished. The other portions of the estate and effects may be liable to the incumbrance as debt; but if no deduction be made, I do not think that any conscientious or other objection attaches.

In the year 1858 exception was, for the first time, taken in a case which I then had before the commissioners, and Mr. Timm, the solicitor of Inland Revenue, wrote me, threatening exchequer process. I then wrote, and thus argued with Mr. Timm:—

"The residuary account of the personal estate of this deceased, supplied to the Commissioners of Inland Revenue, was returned for amendment, with the following objection:—

"The gross value of the leaseholds should be brought into the account, and the mortgage deducted on page 2 of the account. The stamp on the letters of administration is insufficient to cover the gross amount of the personal effects."

"The 'estate and effects' of the deceased were properly valued for purposes of probate, 'without deducting anything on account of the debts due and owing from the deceased,' other than and except as shewn below. The bulk of the deceased's property consisted of leaseholds, the value of which, as estimated for purposes of probate, was 1963*l.*; but the deceased in his lifetime mortgaged for 1700*l.*, parting at such time with his legal interest, leaving him at the time of his decease possessed of but an equity of redemption; and the value of this interest was stated at 263*l.*, being the amount at which the property was valued, after deducting the amount of the mortgage incumbrance. The stat. 55 Geo. 3, c. 184, s. 38, provides, that the 'estate and effects of the deceased' shall be valued for the purposes of probate, 'without deducting anything on account of the debts due and owing from the deceased;' and in this case, the 'estate and effects' were so valued. One portion of the estate being but an equitable interest (an equity or right of redemption), was taken at its value, ascertained by getting at its gross value, and then deducting the amount of incumbrance, and this mode of procedure

would appear to be consistent with the statute, as much so as if the beneficial interest in the estate had been incumbered or affected by any legal estate or charge, and no debt created; the word used being the 'estate' of the deceased; and it would appear quite as consistent so to deal with an equity or right of redemption, as with a life or other estate less than that of absolute ownership; and there is nothing in the statute which leads to any other interpretation, or that the words 'without deducting,' &c., were intended to have any other than their ordinary signification. It may not, without explanation, be seen, that the above interpretation is of any importance in practice, seeing that, after payment of mortgage money, a return of probate duty may be obtained. In many cases it would be unimportant, but in the present case it is of moment; the property is mortgaged close to its full value, and the widow and administratrix being left with a very small income and large family, would find considerable difficulty in providing the extra amount of probate duty.

"I, during the last ten or twelve years, have in practice so treated leaseholds in mortgage, valuing only the equity of redemption as being the only estate in the deceased, and paying probate duty accordingly; and in no instance, excepting the present (and I have had many such cases), have the commissioners objected, having passed and stamped the accounts in every case. Finally, one vital reason why the statute should not be construed as repugnant is, that in many cases great personal wrong would be inflicted; instance the present case:—A widow left with a large family, the only assets, independent of household furniture, being a leasehold property, mortgaged close to its market value, the widow and children being dependent for a subsistence upon the surplus income. Now, the only way in this case by which the debt owing to the mortgagee can be satisfied, so as to give right to return of probate duty, under the 51st section of the statute, is to obtain a new mortgage; and failing this, to sell the property, which would, doubtless, be a necessity, as it would be next to an impossibility to procure the mortgage money from a third party, the security not being ample; so that the widow must either lose a considerable sum in payment of probate duty, which ought to be repaid, but cannot be obtained, or, in obtaining it, be deprived of the scanty subsistence of herself and children."

After the above, Mr. Timm did not further object, and the papers were duly passed and stamped; and I have continued the practice, as above explained, now for a period of about fifteen years, without any successful objection being made. A similar objection was made by the authorities, in a case I had before them in the year 1859, but, after my representations, this was waived.

At the outset, supposing that some of my professional friends may have taken a similar view and acted upon it, I made inquiries, but found that such was not the case, and I consequently proceeded independently.

The question being one calculated to affect the revenue to a serious extent, I did not anticipate, if I succeeded, that I should do so without considerable opposition, and was, therefore, surprised that I was allowed to proceed unquestioned for so long a time—ten years or upwards; and when objection was made, as explained, i. e. in 1858, I anticipated some action would be taken on the subject, and I purposed, in such case, bringing the question before the Birmingham Law Society; feeling it to be a matter of too much moment to be allowed to pass without the best consideration being given to it. However, as you have seen, the point was conceded without further question.

## PATENTS.

THE following particulars are from the Annual Report of the Commissioners of Patents (29th July, 1864):—

Payments made to the Attorney and Solicitor General for England, and their respective clerks, for the year 1863, on account of fees upon patents for inventions, in pursuance of the Report of the Commissioners of Patents to the Lords of the Treasury, of the 1st May, 1853:—

	£	s.	d.	£	s.	d.
To Sir William Atherton, her Majesty's Attorney-General, for certificates of allowance of protection on provisional specifications, 1199 at two guineas each . . . . .	2517	18	0			
Ditto, for flats on reference of complete specifications, 14 at two guineas each . . . . .	29	8	0			
Ditto, for signing warrants, 771 at one guinea each, from the 1st January to the 3rd October, 1863, inclusive . . . . .	800	11	0			
				3356	17	0
To the clerk of the Attorney-General on provisional and complete specifications, 1213 at five shillings each . . . . .				303	5	0
To Sir Roundell Palmer, her Majesty's Attorney-General, for certificates of allowance of protection on provisional specifications, 434 at two guineas each . . . . .	911	8	0			
Ditto, for flats on reference of complete specification, 6 at two guineas each . . . . .	12	12	0			
Ditto, for signing warrants, 254 at one guinea each, from the 5th October inclusive . . . . .	266	14	0			
				1190	14	0
To the clerk of the Attorney-General on provisional and complete specifications, 440 at five shillings each . . . . .				110	0	0
To Sir Roundell Palmer, her Majesty's Solicitor-General, for certificates of allowance of protection on provisional specifications, 1192 at two guineas each . . . . .	2503	4	0			
Ditto, for flats on reference of complete specifications, 16 at two guineas each . . . . .	33	12	0			
Ditto, for signing warrants, 768 at one guinea each, from the 1st January to the 3rd October, 1863, inclusive . . . . .	806	8	0			
				3343	4	0
To the clerk of the Solicitor-General on provisional and complete specifications, 1208 at five shillings each . . . . .				302	0	0
To Sir Robert P. Collier, her Majesty's Solicitor-General, for certificates of allowance of protection on provisional specifications, 439 at two guineas each . . . . .	903	0	0			
Ditto, for signing warrants, 247 at one guinea each, from the 5th October to the 31st December, 1863, inclusive . . . . .	259	7	0			
Ditto, for flats on reference of complete specifications, 11 at two guineas each . . . . .	23	2	0			
				1185	9	0
To the clerk of the Solicitor-General on provisional and complete specifications, 441 at five shillings each . . . . .				110	5	0
				£9901	14	0

## BALANCE SHEET OF INCOME AND EXPENDITURE FOR THE YEAR 1863.

## Receipts.

Stamp duties in lieu of fees . . . . .	£110,313	14	4
By stamp duties on sale of prints of specifications, &c. . . . .	1,895	4	6
	£112,198	18	10

## Payments.

Fees to the law officers of England . . . . .	£ 9,076	4	0
Their clerks . . . . .	825	10	0
Salaries of the officers and clerks in the Patent Office . . . . .	6,874	0	0
Compensations . . . . .	4,584	0	0
Current and incidental expenses in the Patent Office . . . . .	4,577	2	1
Cost of stationery supplied by her Majesty's Stationery Office, books for the free library, and binding, &c. . . . .	866	5	7
Rent of offices, rates, and taxes . . . . .	617	0	0
Messrs. Eyre & Spottiswoode for printing specifications of patents, indexes, &c., and lithographer's bills for drawings accompanying specifications . . . . .	15,673	5	2
Cost of paper supplied to the printer and lithographer by her Majesty's Stationery Office . . . . .	2,504	3	0
Cost of coals and other fuel supplied to the Patent Office by her Majesty's Office of Works, and furniture and repairs . . . . .	649	9	9
Expenses incurred in respect of the Museum at South Kensington . . . . .	678	15	6
Salaries of officers and clerks for ditto . . . . .	730	0	0
Revenue stamp duty account as below . . . . .	20,575	0	0
Surplus income for the year 1863 . . . . .	43,968	3	9
	£112,198	18	10

\* The Act of 1852 in lieu of the old duties upon patents imposed a revenue stamp duty of 5*l.* upon the warrant of the law officer, 10*l.* upon the certificate of payment of the progressive fee of 40*l.* at the expiration of the third year, and 20*l.* upon the certificate of payment of the fee of 80*l.* at the expiration of the seventh year of the patent.

The Act of 1853 (16 Vict. c. 5) converted all the fees imposed by the Act of 1852 into stamp duties.

The revenue stamp duty account for the year 1863 is as follows:—

2095 warrants of the law officers for patents, at 5 <i>l.</i> each . . . . .	£10,475	0	0
586 patents on which the progressive duty of 50 <i>l.</i> has been paid at the end of the third year from their respective dates (10 <i>l.</i> being revenue stamp duty and 40 <i>l.</i> fee stamp duty), 586 at 10 <i>l.</i> each . . . . .	5,860	0	0
212 patents on which the progressive duty of 103 <i>l.</i> has been paid at the end of the seventh year from their respective dates (20 <i>l.</i> being revenue stamp duty and 80 <i>l.</i> fee stamp duty), 212 at 20 <i>l.</i> each . . . . .	4,240	0	0
	£20,575	0	0

**JURIDICAL SOCIETY.**—Feb. 13, 1865.—Lord Stanley, M.P., in the chair.—A paper was read by Mr. Edward Webster on the subject of "Capital Punishment in cases of Murder," contending that penal servitude for life, irremissible except on the convict saving life, and pardonable only on the establishment of his innocence, should be substituted. He considered the question before the Royal Commission not exclusively one of policy, but one also involving considerations of great social importance affecting civilisation, and that the theological arguments had been abandoned, at least, by the House of Commons. As moral retributions, executions, he said, were valueless, and that, even if the number and atrocity of murders remained the same, a secondary punishment would occasion much good by its certainty, and especially by avoiding the possibility of an innocent person dying on the scaffold. The crime of murder, he said, was one "sui generis," presenting an uniform origin, though varying in species, and was of a nature which prevented the fear of the executioner. Most murders were impulsive, and nearly allied to insanity. He referred to other countries in which the capital penalty had been abrogated for several years and not re-established; and concluded, by alleging that, under a secondary punishment, murder and its kindred offences would be less frequent, because the community would be more humane. The lecture appeared to give much satisfaction. Mr. W. M. Best, Mr. Worsley, Mr. Dudley Campbell, Mr. Macqueen, Q.C., Mr. Tallack (Secretary to the Ante Capital Punishment Association), addressed the meeting. The chairman, alluding to the fact of his being on a Royal Commission engaged in considering this question, abstained from expressing any opinion on the subject generally, beyond admitting the evils of public executions; and he then summed up the arguments of the speakers with his usual ability.

**COUNTY COURTS EXTENSION.**—At a sitting of the Brompton County Court, Sir J. E. E. Wilmot, Bart., the presiding judge, who is also judge of the Marylebone and Brentford County Courts, made some observations upon the subject of the measure contemplated by Government, as announced in her Majesty's speech, for conferring an equity jurisdiction upon the county courts. He said he had heard that announcement with very great satisfaction, as he had, during the many years he had held the office of county court judge, been always strongly of opinion that the existing tribunals in equity, for various reasons, which he enumerated, afforded no means of obtaining justice to the poorer classes of the community. He then pointed out the necessity of reconstructing and reorganising existing courts, and constructing additional ones, illustrating his remarks by references to his own experience in the district. He then went on to say, that there were other questions connected with the proposed Government measure which ought not to be lost sight of. The power of committal exercised by the judges was susceptible of improvement and modification; and what was now accomplished to mitigate the carrying out of commitments was by the plaintiff's consenting to allow the commitment to hang over the head of the debtor, in the event of the non-payment of the instalments, might be placed in the power of the judge by legal enactment. He thought, too, the time was come when the common-law jurisdiction of the county courts might be further extended and enlarged; and what had been often recommended by Lord Brougham might most usefully be introduced, namely, to allow plaintiffs in all cases whatever to initiate their actions in the county courts, leaving it open to the defendants in certain cases, and in those exceeding a certain amount in value, to remove them to a superior court. He felt sure that the result would

be, that when cases were once there they would be seldom removed. At present, as they were aware, the law was, that all cases could be tried in the county courts with mutual consent. But as the consent of one or the other party was indispensable, it was always withheld, and consequently that provision was altogether useless. There were other subjects which might be made the subject of the serious consideration of the Legislature, and which he trusted would not be lost sight of in the bill to be presented to Parliament. He looked for a comprehensive and statesmanlike measure, and not one which would require supplemental legislation in a future session. Mr. Clarke, sen., practising attorney at the Marylebone and Brompton County Courts, spoke on behalf of his professional brethren, and indorsed all what had been stated by the judge.

**THE BANKRUPTCY OF MORRIS LEVI, OF BIRMINGHAM.**—Yesterday, at the Birmingham Bankruptcy Court, judgment was given by Mr. Commissioner Sanders, on a petition for the annulment of the bankruptcy of Morris Levi, of Birmingham, whose extraordinary failure some months ago, under the peculiar circumstances attending it, excited surprise throughout the commercial world. The petition mainly arose out of the criminal proceedings instituted against Levi at the instance of the Commissioner in Bankruptcy. The bankrupt was charged before the magistrates (under the fraudulent bankruptcy sections of the Bankruptcy Act) with obtaining large quantities of goods without the prospect or intention of paying for them; and the investigation had advanced two days, when Mr. John Smith, who appeared for the bankrupt, took exception to the jurisdiction of the magistrates, on the ground that the accused was not a bankrupt. The basis of this plea was the fact that the original petitioning creditor, John Painter, withdrew from the petition, and that other creditors, without taking out a fresh petition, as Mr. Smith contended that they were bound by the act to do, proceeded and obtained an adjudication upon Painter's petition. He urged that Levi's bankruptcy was barred by a deed of assignment, to which the petitioning creditors (Carpenter and others, of Manchester) were consenting parties, and under which they had taken a benefit. Upon Mr. Smith stating that a petition would be presented to the Bankruptcy Court, praying for the annulment of the bankruptcy on these grounds, the magistrates adjourned the hearing of the case, and admitted the prisoner to bail in 2000*l.*, pending the decision of the commissioner. This decision was given yesterday. The commissioner held that there had been a valid bankruptcy, and dismissed the petition with costs against the petitioner. He refused to believe the evidence given in support of the prayer for annulment, and characterised the whole proceeding as a manoeuvre and a contrivance resorted to for the purpose of impeding the course of justice. The decision will be appealed against.—*Leeds Mercury.*

**THE NEW COURTS OF JUSTICE.**—The bill for the Concentration of the Courts of Justice provides, that in making up by fees from the suitors (other than those of the Court of Chancery) the residue or deficiency in the funds provided for the new building, the mode of payment is to be a redemption annuity of 4*l.* per cent. on the sum to be thus made up, which annuity is to be paid for a term not exceeding fifty years. The suitors (other than those of Chancery) are to contribute in proportion, as far as may be, to the extent of the use made by them of the building. The contribution is to be levied by a separate fee, called "the rent of courts fee," to be collected by stamps. The bill provides, that causes at present tried at Guildhall and at Westminster are to be tried in the new building.



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## THE JURIST.

LONDON, FEBRUARY 25, 1865.

UPWARDS of 20,000*l.* were expended by the late Statute-law Commission in an abortive attempt to compete with "Chitty's Statutes." The only further advance towards a code or a digest, of which formal notice has been given, is a little more repealing of repealed acts; but there is reason to fear that the sense of that obligation to be always reforming the law which is supposed to bind every occupant of the woolsack, will shortly urge the present Lord Chancellor or his successor to a still more expensive and equally abortive competition with Harrison's and Chitty's Digests. We say abortive, because, though a digest is one of the most pressing wants of the profession, there is no general agreement as to the proper function, form, and authority of a digest; or if there be an agreement among those whose utterances on the subject have been chiefly listened to, we believe that it is not shared by that large majority of sound and judicious lawyers who have no time or inclination for disputation. A digest prepared otherwise than upon a complete and exhaustive plan, and with the intention from the commencement of superseding every other record of precedents, would be worthless.

The merit of the address of Sir James Wilde at York lies rather in the clear and easy exposition of the growth and present state of the law, than in any suggestions for amendment; and a friendly examination of that address, and of some recent comments upon it, will enable us to point out what we conceive to be incomplete or erroneous in the prevailing views on the subject of a digest of the law.

After referring to the amendments in procedure which were originated by Lord Brougham, Sir J. Wilde proceeded to notice the defects in the form of the law itself:—"To what extent," said he, "can the common law of this country lay claim to simplicity, certainty, clearness, and unerring justice? Above all, what can we say of its compactness, whose principles wander at large through the pages of 300 volumes [the number exceeds 1100], and the leaves of whose oracles lie as they fall, scattered and unsown?" Then, digressing for a time from form to substance, he made some remarks on the inevitable insufficiency for modern wants of laws which have suffered no general revision from time immemorial, and have been built up mainly by judicial labour upon foundations laid before the time of the Plantagenets:—

"A few further reflections may tend to shew with what inevitable defects. In saying this, I am far from the suggestion or belief that this gradual progress of the law, built upon old foundations, resting step by step on precedents reaching far back into remote antiquity, and thus bringing up to the surface the experience and wisdom of past generations, was altogether faulty in system, or void of invaluable features. It had, however, this capital defect, that the powers of the courts of law were constructive only; under the

name of adaption they could practically create; under no name could they destroy. But it was not enough to create, power was needed to abolish; it was not enough to build, unless timely clearance could be made of the ruins and rubbish of past structures. Here it is that, in my opinion, the system has broken down. This defect it was that choked the accesses of justice with empty forms and worn-out expedients, and induced those vices of procedure which the labours of the law reformers of the last thirty years have scarce sufficed to remove. . . . Let us examine our English system of law making a little closer, and observe the inevitable process. Did a new position arise for which the jurist had no precedent, analogy was resorted to. If no near analogy was at hand, a more distant one was sought; if none found in the region of similar rights, a more remote one, taken from a different class or branch was often brought forward, and bent, perhaps distorted, till it served the end. It might, perhaps, have been better to deal with a new class of cases as avowedly demanding an application of law, for which there was no precedent; and this has been sometimes, though more rarely, done. But it must be borne in mind that the Courts at Westminster had in strictness no power to make the law, but only to declare it. They had no alternative, therefore, between declaring the voice of the law to be absolutely silent, and adapting its recorded oracles, such as they were, to the case in hand as best they might."

If this be a remediable defect in the organisation of English law, the lecturer has not hinted at the remedy. Indeed, he proceeds to point out the advantages of the method:—

"It is no small benefit that, in a fresh application of legal principles to a new class of cases, there should be apparently mingled the element and the sanction of time. The decisions of the Courts, being avowedly nothing more than enunciations of pre-existing law, though in reality new determinations framed upon old principles, carry with them the veneration of tradition, while they embody the spirit of the time. It is another circumstance of value that the changes effected are gradual, and while they do not anticipate yet keep pace with the necessities of the day. Further, when any new subject engages the attention of the Courts, it is the peculiar feature of this system, that each step is taken separately, never exceeding the particular circumstances of the case or aiming at generalities. Thus the law falls into shape as the subject becomes familiar; opportunity is given by the succession of each fresh example for contrast and reconsideration; the direction first taken is followed out, modified, or even reversed; limitations and qualifications make their appearance; and something like a general rule at length emerges, well suited to the actual exigencies from the experience of which it is drawn. If this is legislation, it is legislation of the best kind, for it is framed by those who have no popular interests to support or collateral ends to attain, and who bring to the task carefully-trained intellects familiar with the subject in hand."

But there is a set-off against these advantages:—

"The evils of the system are, perhaps, equally ap-

parent. Invested with a power larger than avowed, the tribunals may be said to have too much or too little confided to them. If they frame new applications of the law they are obliged to do so on old models only, and administer them under old forms. Tied down by the past, they are too little set at large to work out entire justice. Working in the trammels of tradition, they are driven to the resort of legal fictions. Founding all decision on precedent, they are circumscribed and limited by the analogies on which their decisions are founded. The broad rule of right is too apt to suffer in such circumstances; and full justice must needs be at times shorn down to obtain a footing on precedent. But the worst feature attending a law purely traditional is its incapacity to obliterate. Tradition is the expression of permanence; and if it perpetuates truth it also embalms error. It renders what is really obsolete unquestioned because it is familiar, and fences it from attack by giving it the immunity of age."

It is obvious that the defects here pointed out are inseparable from the system. Indeed, they are stated rather as *a priori* deductions from the data than as the result of experience. A judicature bound by precedent cannot do much towards the correction of precedent. That is the function of the Legislature; and the facility of legislative correction which a digest would afford does not appear to have been hitherto pointed out. When a rule of the common law is found to be inconvenient or anomalous, the safest mode of getting rid of it is simply to enact, that the precedents which involve the rule shall no longer be binding. The construction of a new rule is then left to the judicature; and the course they will take may be anticipated with certainty from the tendency of their previous comments on the rejected precedents. But to object to laws founded on precedent, that "tradition is the expression of permanence," and that "if it perpetuates truth it also embalms error," is to talk without aim, or to object to all law, for that only is law which is fixed. The synonym of an act of Parliament is a word expressive of permanence. Accordingly the lecturer proceeds to point out that codes, no less than precedents, fail to provide effectually for the future:—

"Does any code really offer a text which, when applied to the circumstances of an individual case, at once, and without reasonable doubt, decides it? Let the innumerable decisions on some of the most celebrated codes answer the question. Take the *Ordonnance de la Marine* of Louis XIV. How simple and brief, and apparently plain, the text! Yet who ever read the ingenious commentaries of Valin or Boulay-Paty on any and every article of it without owning that the text was only plain because the difficulties of particular cases were not present to view, and only simple because their complications were excluded? The same thing is true of the codes of the French empire, and of all others which the world ever saw. The truth is, that the intricacies and complexity of possible combinations of fact are beyond the range of human conception, and any attempt to foresee and provide for them all beforehand, and dispense a ready-

made justice with success, will give little reward to the labour it wastes. But a code resting on no detailed decisions or elaborate instances to expound it has an especial evil of its own. There is no more fruitful source of doubt and litigation than the meaning of language. The careless use of language does much, but the inadequacy of language, as the vehicle of precise thought, does, perhaps, even more. What treaty, or code, or statute was ever so framed that its meaning in all possible contingencies was free from reasonable controversy? Now, the especial evil of all codes and statutes is, that over and above the difficulty of framing adequate principles, the ambiguities of construction are introduced. Expressed in certain definite language, its force depends upon the interpretation which ingenuity may give or deny it. And here the system of case law contrasts favourably, for its principles, enforced in every variety of language and under every turn of thought, shine out in their application rather than in their expression, and are further removed from the cavil of words."

This is a concise and clear expression of the grounds on which every thoughtful lawyer rests his preference of precedent law to statute law—the necessary certainty and completeness of exposition in a well-reported precedent; the inevitable uncertainty and incompleteness of the most carefully-framed enactment. But now the lecturer shifts his ground, and takes up a less tenable position:—

"We have nothing in the English law between the succinctness of a maxim and the detail of an individual case. We have no declared body of rules, however general, and no set of collected principles, however broad. There are, no doubt, to be found scattered up and down our reports, enunciations of general legal principles; but even they have never been collated or brought together, and their mutual dependence shewn by group or contrast. But, in far the majority of cases decided, no general principle is propounded. The principle is, indeed, there, guiding and controlling the decision; a silent appeal is made to it in the mind of the tribunal; but such is the jealous caution of the judicial mind, and so great the obstacles cast in the way of generalities by a system which calls only for the decision of the individual case, that broad rules are seldom or never laid down. Hence it comes, that the cases containing the law on one particular branch or subject are rarely appealed to in discussion of another branch or subject, though these may be cognate, and though the law ought to be, and probably is, in harmony with respect to them. No subject can be treated philosophically that is treated entirely in detail, and no system can promise harmony that is based on separate trains of independent thought. Is it not possible to amend our legal system in this regard? If it be considered not wise, that the tribunal should do more than decide the individual case, and pledge itself, as it were, to an area of law wider than that occupied by the matter in hand, and this to preclude the possibility of prejudging difficulties not foreseen; still, the law as already settled, and to the extent to which it has already been actually applied, might surely be bound together and epitomized."

vised for the practical use of mankind. Is not this what, in fact and in practice, every well-read lawyer more or less does for himself? When a case presents itself to his mind for legal solution, does he instantly recur to some specific case forming a precedent, or does he not rather fall back upon the general legal principles with which his mind is imbued? Now, I hope I am not too sanguine in this; but I cannot resist the belief, that within the bounds of reasonable labour and time, the general principles and broad bases, on which our common law reposes, and which tacitly guide the decisions of our Courts, might be brought to the surface, grouped together, subordinated in their several relations, and contrasted in their differences. An attempt of the kind, and not without great success, was made by the late Mr. Smith in his *Leading Cases*.

. . . . What I desire to see is a similar attempt made with authority, and on a much larger scale, to be finally confirmed by act of Parliament; but I do not conceal from myself, that the first judicial minds of the country are alone adequate to the task; at least, in its ultimate stages; and that it is far beyond the reach of the unpaid services of occupied men. If such a result could be obtained, the benefits are not doubtful: to the student and the general public the vast area covered by the law would present a district set out in order, in place of a tangled thicket. The true bearing of each abstract proposition would stand out plainly, because side by side with others of a similar nature. Here, too, another great advantage would be reaped. As the decisions which have radiated from some central case came to be classed together, and their common principles, with its qualifications and limitations extracted, all those of a questionable soundness would come to be suppressed. . . . But the great gain that would accrue to the law would be the reduction of its bulk. We possess in our legal records accumulated instances of exact justice, in individual cases, series after series of social duties and relative rights, set forth in every variety and combination, and pursued into the minutest details, and to all of which, each in their turn, the law has been applied and adjusted with a precision and laborious rectitude such as the legal annals of no other country can, I believe, produce. The national attribute of exact labour on minute objects has stood us in good stead in the beating out of our laws. . . . But they exist in a scattered, inconvenient, and unmanageable form. Instances in place of precepts, examples in the place of rules, our recorded decisions stand thick together like a fair field of grain—full of wealth and worth, but waiting the hand that shall gather it into sheaves and store it to the use of man. And here I would observe, that the method I propose is properly a digest and not a code; and a digest has this advantage, that it permits of gradual formation. Unlike a code, which is the offspring of large and comprehensive views—and should deal with all subjects as a whole—a digest, with narrower aim, may properly be worked out piecemeal. . . . If there be those who fear to handle a body of laws which, on the whole, work so well, I would observe to them that I propose to displace nothing. I would not that the

authority of the cases should necessarily be extinguished by the authority of the digest. Unless expressly set aside, and [as?] inconsistent with other decisions better approved, I would have all decisions remain of authority, content to await the time when the life shall have passed into their offspring, and they fall away of themselves, and pass into a sure decay."

Bating the attribute of authority, we have all that is here asked for in our treatises. A revision of the cases, and an authoritative repeal of such as are deemed to be erroneous, must form part of every scheme for digesting the law. But to substitute "precepts in place of instances—rules in the place of examples"—would be to exchange the peculiar advantages of law in the form of precedent, which have been so well indicated, for the peculiar disadvantages of codified law. Codes—at least such as are framed by practical men—are the fruit of experience, not of speculation. The French codes consist of precepts and rules, not spun from the brains of their framers, but drawn from the precedents and traditions of the ancient law. Large portions of the codes consist of almost literal extracts from the treatises of French lawyers, which have lost all their flexibility and value by the process. Beyond the elimination to a certain extent of conflicting authorities (which is the least of the benefits to be expected from a digest), Sir J. Wilde's plan offers no remedy for, but rather an aggravation of, the existing evils. For his digest of "principles and rules" would not be a digest, but a code. Promulgated by authority, it could not be neglected. And as the existing precedents, or the greater part of them, would retain all their authority, we should have no alleviation of the bulk and chaotic confusion of the law, but to the labour of collating our 1100 or 1200 volumes of cases with each other would be added the labour of collating them with the principles and rules of the digest, and of criticising the whole. In fact, the state of things would be such as might flow from enacting that all the standard treatises, as well as the reports, should be binding authorities.

Mr. Reilly, in his "Observations on a Digest of Law" (a reprint of which will be found ante, p. 30), appears to understand as we have done, that Sir J. Wilde means by a digest a collection of precepts or rules, and not a collection of examples or precedents; and he seems to distinguish a digest from a code merely by the absence of authority. "A code is the work of legislative authority; a digest is not, or need not, be more than a systematic classification of law. . . . A code makes the law, a digest merely states it." But if the statement is authoritative, it is a code. This use of the term is not justified either by ancient or by modern usage, nor by convenience. Until the delivery of the address at York a digest was understood to mean a concise statement and orderly arrangement of precedents.

Mr. Reilly proposes that the digest should be prepared under the direction of a committee of the Privy Council, should include the statute law, and should be in the form of propositions, with references to authorities, and should not be enacted. "The digest should,

I submit, be left to rest for such acceptance as it would require at first merely on its intrinsic merits, and on the fact of its compilation by efficient authority. For greater solemnity, it might be promulgated by proclamation from the Queen in Council. . . . Once issued, it would soon establish itself."

This would be merely to create a board for editing treatises on law at the expense of the country. We think they would not be so well done as they are done under the voluntary system, and the great evil—the 1100 volumes of authorities—would be untouched.

In a well-written article in the last part of the *Law Magazine*, intitled "The Preservation of English Law," this system of writing up the law at the public expense, without giving authority to the result, is recommended. We have no confidence in such a scheme. In the business of compiling unauthoritative treatises, neither the duty of appointing the best men, nor that of performing the work in the best manner, would be discharged under the sense of any great responsibility, and the scheme would probably end in an expensive job, or if success were achieved, it would not be very important.

What is wanted is an abridgment of the reports, omitting all superfluous and obsolete matter, and all erroneous decisions, and retaining all that is worth preserving, still in the form of reports, the whole being arranged methodically. The selection of men to collate, expurgate, abridge, and arrange all the precedents of the law, with a view to the putting of their work in the place of the existing authorities, and the performance of such a task, would be done under a sense of heavy responsibility, and the probability of success would be commensurate with the importance of the anticipated result.

If the distinctions between equity and law and between courts of equity and courts of law ought to be wholly abolished, and if the decision of actions involving claims of small amount is properly entrusted to the county courts, it seems an easy and safe step to infer that equitable jurisdiction in small matters ought to also be given to the same courts. The inference, however, would not be logically sound, even from those premises; for it may well be that the constitution of the superior courts fits them for an equitable jurisdiction, while the inferior courts are unfitted for it. There is great reason, however, for doubting the soundness of the premises, and believing that nearly the whole of the administrative functions of courts of equity, and some portions of their remedial functions, are better discharged under the present arrangement than they would be if committed to the ordinary courts of law.

The Lord Chancellor's speech on introducing his bill was not very clear, and the bill itself is not yet accessible; so that we cannot even guess how the great problem of ascertaining the limits of the jurisdiction is solved; but it appears to be intended that the county courts should, among other things, have authority to entertain administration suits and suits between partners. Now, while conceding that it may

be well to excuse the superior judges from looking into the retail accounts of bakers and tallymen, we think it is very obvious that the county courts are ill fitted for the administration of assets, and the performance of the trusts of wills, which often run through two or three generations, and that, at least so long as the differences between law and equity, and between common-law lawyers and equity lawyers, exist, it would introduce the greatest confusion and uncertainty to entrust the decision of equitable rights to the common-law lawyers who are the judges of the county courts.

Some amendment of the procedure in Chancery in small matters is undoubtedly necessary, and it might be well to provide in such cases for the decision by the chief clerk of many matters that must now be brought into court; and it might also be well to increase the number of clerks. The inconvenience and expense involved in the necessity of sending all cases (out of the county palatine) to London, have been much exaggerated, but doubtless there would be great advantage in establishing a branch office of the Court of Chancery in each of the principal towns, where much of the business now transacted in chambers might be got through. This, with a more liberal use of the post-office, would give all the facilities that could possibly be derived from local courts, without sacrificing the great benefit of uniformity of practice, and the general supervision of judges and officers of the highest class. In ordinary plaintiffs for debt, the debtor and creditor usually reside in the same district, but in those matters which come within the administrative action of the Court of Chancery, the persons interested are frequently scattered over the country, and the forum for adjusting their rights could not be placed more conveniently than in London.

### Correspondence.

#### PROBATE DUTY PAYABLE IN RESPECT OF LEASEHOLDS IN MORTGAGE.

TO THE EDITOR OF "THE JURIST."

SIR,—The construction of the 38th section of the 55 Geo. 3, c. 184, in Mr. Reynolds's paper on the payment of probate duty, published in your last number, involves a point connected with the title to leaseholds, in respect to which, if incorrect, it may create a serious objection in cases where the value of the leasehold exceeds the amount covered by the duty. Therefore, it should be well considered before it is generally adopted.

When an unincumbered leasehold estate is sold by an executor or administrator, the purchaser may, I apprehend, insist on having the probate or letters of administration stamped, so as to cover his purchase money. But here the estate is incumbered. Suppose it to be worth 1500*l.*, mortgaged for 1000*l.*, the other personal estate under 100*l.*, and the value of the whole sworn under 600*l.*, and the probate or letters of administration stamped accordingly. The leasehold is sold for 1500*l.* If Mr. Reynolds's construction is right, the purchaser cannot require any other stamp; if wrong, the purchaser's title will be defective without it.



The question depends on the meaning of the word "estate" in the act, which Mr. Reynolds interprets as if the mortgagor had absolutely disposed of a portion of his interest equivalent to the sum borrowed, or had charged it absolutely with the payment of such a sum; whereas he has only pledged it by way of security. His construction is opposed to all received notions of the respective interests of the mortgagor and mortgagee. If the mortgagor's estate is only what remains after deducting the amount of the mortgage, the rest must be the estate of the mortgagee, and would have to be valued as such in case of his death. But we know it is not so accounted; the debt constitutes part of the mortgagee's estate, and it follows, that the leasehold forms part of the "estate" of the mortgagor. He makes no distinction between the case of a mortgagor and that of a purchaser of an equity of redemption, although when we apply the direction that the debts of the deceased are not to be deducted, they are seen to be essentially different. Suppose the executor pays the debt out of the general assets, will not the whole leasehold estate, its full value, be part of the estate of the deceased? Has the payment of the debt worked any alteration in the nature of his interest? Suppose a testator gives leaseholds which have been mortgaged by him to A., freed from the mortgage, and leaves other assets sufficient to pay his mortgage and other debts, A. will take the leaseholds clear. He will have their value without any deduction, but he can take no more than the testator has to give. Then is it not incorrect to say, the "estate" of the deceased is the equity of redemption, and nothing more?

But to get at what is intended, "estate" must be read in connexion with the words, "without deducting anything on account of the debts due and owing from the deceased." They are used in relation to each other. Now, the construction ignores the fact, that the mortgage debt is as much a debt due from the deceased as any other; and that, while the act expressly says the debts are not to be deducted, it makes no distinction between mortgage and other debts. If a man dies possessed of a legal estate, charged with money he has borrowed to its full value, can it be said that he leaves no estate and no debts? In making up his residuary account, if the executor sells the leaseholds, and pays the mortgage debt out of the purchase moneys, will he not enter the whole of the purchase moneys among his receipts, and the debt among his payments?

The acquiescence of the stamp authorities is of no value in the argument. Having received all they were entitled to retain, to have required the full duty to be paid would have been causing useless trouble and expense to all parties.

In conclusion, I will add a case which lately occurred in practice. An agreement for the grant of building leases was assigned by the grantee as security for advances, which in the end exceeded the value. He died insolvent. His executors renounced, and, to enable the mortgagee to make a title, the widow took out letters of administration, the effects being sworn under 100*l*. The mortgagee then sold the benefit of the agreement for much more than 100*l*.; and, for a nominal consideration, the testatrix joined in the assignment. On a resale, the purchaser objected to the stamp on the letters of administration, and the vendor, after some discussion, thought fit to rescind the contract.

Lincoln's Inn, Feb. 21.

S. S. W.

[With great deference to our learned correspondent, we think that the construction adopted by Mr. Reynolds is right. The value of the deceased's es-

tate collectively, and of each item of the estate individually, is what it will fetch if sold. If the estate, or any part of it, is subject to a charge, its value is diminished by the amount of the charge. Debts do not as such constitute a charge, and do not affect the estate in the hands of a purchaser from the executor or administrator. When a leasehold estate, charged with a mortgage debt, is valued as an equity of redemption only, the deduction is made, not for a debt, but for a charge. It is not the less a charge because it is also a debt. The Stamp Act does not say that no deduction is to be made for charges. The testator's estate in the mortgaged leasehold property, to follow out our correspondent's reasoning, is the absolute title to the enjoyment of the property during a term of years, or rather is the shadow of that title, the real title at law being in the mortgagee. But the beneficial title is subject to certain charges—an annual rent and a mortgage—both debts, but not the less charges. In valuing the estate, is no allowance to be made for the rent because it is a debt, secured by covenant?

Suppose that the testator is entitled to two leasehold houses—one derived under his father's marriage settlement, and charged to half its value with a portion for his sister; the other mortgaged by himself for half its value. It is conceded that in the one case the value of the estate, after deducting the charge, is the value on which duty is to be paid. Why should the rule be different in the other case? In either case it is equally optional with the executor whether the charge shall be paid out of the property charged or out of the general assets. And this conclusion is in accordance with the policy of the rule against deducting debts in the first instance—a rule intended to prevent evasions, which are impossible with respect to actual charges on property.

If our correspondent's construction is right, it may frequently happen that no return of probate duty can be claimed, although the whole of the assets may have been applied in satisfaction of debts and duty. Let the entire personal estate consist of the equity of redemption of a leasehold mortgaged for 1000*l*., the exact value of the property, and other assets, only sufficient to discharge the probate duty. If the executor is so unwise as to prove the will, and then allows the mortgagee to foreclose or realise his security, how can he obtain a return of the duty? The only return of duty allowed in respect of debts is on such debts as "the executor or administrator hath paid."

Moreover, the argument of our correspondent proceeds upon the false assumption, that the estate of the mortgagor in the mortgaged property is the estate which was created by the lease. It is no such thing either at law or in equity. At law the mortgagor has no estate at all; he is a perfect stranger to the property. In equity he has nothing more than the right to redeem the property on payment of the amount secured upon it. The value of that right in the market is the value of his equitable estate or interest in the leasehold property. If, after the mortgagor's death, his executor pays the mortgage debt out of the general assets, he changes the condition of the mortgaged estate, just as he might do if the incumbrances were only a charge, and not a debt of his testator. But the probate duty is determined by the condition of the estate at the death.]

### Reviews.

*An Essay upon Composition Deeds and other Deeds of Arrangement with Creditors, under the Stat. 24 & 25 Vict. c. 134.* By THOMAS ERSKINE HOLLAND, M.A., Fellow of Exeter College, Oxford, and of Lincoln's-inn, Esq., Barrister-at-Law. 12mo., pp. 207.

[Sweet.]

MR. HOLLAND, in his Preface to this very complete and useful treatise, expresses an opinion, that the uncertainties which obscured the subject have been, by the process of litigation, to a great extent dispelled. No doubt, a great many questions on the arrangement clauses have been settled; but as the clauses were unintelligible, and the questions raised upon them were innumerable, that does not represent a very satisfactory result. Not a step can be taken in applying the law by any light shed by the clauses themselves. It is not in them, but in the decisions by which they have been partly beaten into shape, that the law is to be sought; and these are so numerous, and often so inconsistent, that in carefully arranging, collating, and stating them, Mr. Holland has rendered an essential service to those who have to prepare or to advise on the operation of such deeds. The first four chapters are devoted to the subjects of compensation generally, composition by agreement under seal (with the rules as to accord and satisfaction), arrangement by deed, and the earlier statutes. The clauses of the act of 1861 are then set forth, with a thick fringe of annotations, expounding the construction which the Courts have fastened upon the ambiguous and contradictory sentences. Having thus produced the clauses in as presentable a form as possible, the author sets forth the General Orders, and then proceeds to consider the subject systematically, under the following heads:—*Cessio bonorum*—Conditions that the deed must extend to all creditors, and be for their equal benefit, and that the provisions must be reasonable—The use to be made of the certificate of registration—The deed must not be fraudulent—Oure of faults of the deed by the act. The concluding chapters are devoted to a summary of the law; notes on pleas and deeds, and anticipations of or suggestions for future legislation.

*A Treatise on the Law of Railways, Railway Companies, and Railway Investments; with an Appendix of Statutes, Forms, &c.* By SIR W. HODGES, Knt., Chief Justice of Her Majesty's Supreme Court, Cape of Good Hope. Fourth Edition. By CHARLES MANLEY SMITH, Esq., of the Inner Temple and Midland Circuit, Barrister-at-Law. Royal 8vo., pp. 1006. [Sweet.]

A LENGTHENED notice of so well-known and well-established a work as Hodges on Railways, would be superfluous; but some acknowledgment is due to Mr. Smith for his judicious and conscientious labour in preparing the third and fourth editions of the book, and incorporating in them the results of the ten years of legislation and litigation which have elapsed since the publication of the last edition by the author. The following summary of the contents of the work will shew the great variety and importance of the subjects comprised in it:—1. The formation of railway companies. 2. Procedure upon railway bills in Parliament. 3. Constitution and powers of railway companies. 4. Railway investments, and herein of the law applicable to, and the rules of, the Stock Exchange. 5 and 6. Powers to take land, and compensation. 7. Investment, or payment of purchase money or compensation, and title to land. 8. Powers and obligations to construct and repair the works. 9. Ju-

risdiction of the Board of Trade. 10. Obligations and restrictions imposed by the statute law on railway companies (Railway and Canal Traffic Act, carriage of the mails and troops, leases, &c.) 11. Arbitration between railway companies. 12. Amalgamation. 13. Rights and liabilities as carriers of passengers and goods. 14. Mandamus. 15. Injunction. 16. Assessment to poor's rate. 17. Dissolution; recovery of deposits. In an Appendix, the statutes and forms are given; also the Report of the Select Committee of the House of Lords as to Lloyd's Bonds; and the letter and circular of instructions issued by the Board of Trade after receipt of the first notice of intention to open a new railway.

*Outlines of Equity, being a Series of Elementary Lectures on Equity Jurisdiction, delivered at the Request of the Incorporated Law Society; with Supplementary Lectures on certain Doctrines of Equity.* By FREEMAN OLIVER HAYNES, of Lincoln's-inn, Barrister-at-Law, and late Fellow of Caius College, Cambridge. Post 8vo., pp. 517. [Maxwell.]

THE lectureship at the Law Institution has enriched our libraries with several works of merit. The Essay of the late Mr. John Adams, on the Doctrine of Equity, founded on his lectures before that institution, was a very able performance, and it is not easy to explain the neglect into which it has fallen; but Mr. Peachey's elaborate Treatise on the Law of Marriage and Family Settlements, and the useful and able elementary work of Mr. Haynes, keep their ground. Nor do we anticipate a smaller measure of success for Mr. Haddan's Outlines of the Administrative Jurisdiction of the Court of Chancery.

In preparing this second edition of his work, Mr. Haynes has committed the great mistake of not attempting "to alter or rewrite any portion of the lectures, so as to adapt them (in the few cases needful) to the subsequent alterations in the law." In lieu of such alterations, he has made the requisite corrections in notes. But an incorrect text, corrected in notes, is not a form in which any book—least of all one intended for the use of students—should be put forth; and the explanation that the author finds it "distasteful to write in the style suited for oral delivery matter not in fact intended to be used orally," is anything but an excuse. If it is worth anything, it condemns the publication of the lectures.

The present edition is enriched by the reprint, in an Appendix, of Mr. C. Chapman Barber's masterly Statement on Equity Practice and Procedure, which was prepared for the use of the English and Irish Chancery Commission. Some notes and references have been added by Mr. Haynes.

### THE COURTS OF JUSTICE CONCENTRATION (SITE AND MONEY) BILLS.

A PETITION in favour of these bills, signed by upwards of 600 barristers, has been presented to the House of Commons. A similar petition to the House of Lords has been as numerous signed, and will lie for some time longer for signature in the libraries of the four Inns of Court.

The petition runs as follows:—

"1. That two bills have been introduced into, and are now pending in, your honourable House, to be intitled "The Courts of Justice Concentration (Site) Act, 1865," and "The Courts of Justice Concentration (Money) Act, 1865."

"2. That the purposes of the said bills are the acquisition of a site for the erection and concentration

of the courts of justice, and of the various offices belonging to the same, and to supply means towards defraying the expenses thereof.

"3. That your petitioners cordially approve of the objects of the said bills, and of the means therein proposed for their attainment.

"4. That your petitioners can testify to the many inconveniences arising from the want of sufficient and proper accommodation at the several courts of justice, and from the separation of those courts, and the distance of the Courts at Westminster from the city and the Inns of Court; and your petitioners are fully persuaded that great waste of time and money, and frequent failures of justice, are occasioned by the same causes.

"5. That your petitioners are convinced that no measure short of a complete concentration of the principal courts of justice, such as is proposed by the said bills, can effectually remedy these evils.

"6. That inasmuch as the entire cost of the scheme will ultimately be borne by the suitors in the various courts, it is only just that the site most convenient to the public and the legal profession should be chosen, and that no mere consideration of the embellishment of the metropolis should be allowed to interfere with such choice.

"7. That your petitioners are of opinion that the site proposed in the first of the above-mentioned bills is the one which will best meet the convenience of the public and the legal profession.

"Your petitioners, therefore, humbly pray that the said bills may pass into law."

#### THE COUNCIL FOR LAW REPORTING.

THE following appointments have been made of Members of the Council for Reporting according to the scheme of the Bar Committee:—

##### *By Lincoln's Inn.*

Sir Fitzroy Kelly, Knt., M.P., Q.C.  
W. T. S. Daniel, Esq., Q.C.

##### *By the Inner Temple.*

William Forsyth, Esq., Q.C.  
George Markham Giffard, Esq., Q.C.

##### *By the Middle Temple.*

T. W. Greene, Esq., Q.C.  
J. B. Karslake, Esq., Q.C.

##### *By the Law Institution.*

Wm. Strickland Cookson, Esq. (of the firm of Clayton, Cookson, & Wainwright).  
William Williams, Esq. (of the firm of Currie & Williams).

The Law Institution, we understand, has offered to add to the guarantee proposed by Lincoln's Inn and the Temples, a further guarantee to the extent of 125*l.* per annum.

#### Imperial Parliament.

##### HOUSE OF LORDS.—Monday, Feb. 20.

##### COURTS OF JUSTICE SITE BILL.

The Earl of Longford drew the attention of the House to a return which had just been laid upon their Lordships' table, relating to the number of houses to be removed, and of persons to be deprived of their places of residence by the proposed bill. That return gave the number of houses to be removed now upon the seven acres near Temple-bar proposed to be taken, at 151, while the number of persons turned out only appeared to be 302, being two to each house. It occurred to him that there might be some inaccuracy in that return, considering how densely populated the district was, and he had referred to the parliamentary agents, whose

names appeared on the back of the bill, who informed him that the number of the owners and leaseholders alone had been given, and not those of the lodgers. He suggested that a supplementary return should be directed, in order to afford the requisite information.

The Lord Chancellor said the question was not as to the accuracy of the return, but merely whether it included all the information required, which, in his opinion, it did not do, as it was a *farce*\* to say that only two persons resided in each house. He would see that a further return was made, which would give the number of lodgers to be turned out by the projected plan.

Lord Shaftesbury remarked, that the return was not in accordance with the Standing Orders of the House, which directed, that before the second reading of any bill involving the removal of houses in the metropolis, a return should be made, stating the number of such houses required, with their character, and the positive and actual number in detail of the persons who would be dispossessed; and, further, whether there was any provision made for their accommodation. The return put the number of houses required at 151, each of which might be assumed to contain from two to twenty rooms, and yet it put the number of inhabitants at only 302. This, on the face of it, was a perfect mockery of a return, and did not, in the slightest degree, pretend to meet the requirements of their Lordships' Standing Orders. He trusted, that the noble Lord on the woolsack would insist upon a proper return being made of the actual number of poor persons, who would be deprived of their homes through their houses being required for the purposes of the Courts of Justice Site Bill.

The Lord Chancellor said he had been much struck with the form of the return, and he would take care that a return was made in accordance with the Standing Orders.

Tuesday, Feb. 21.

The Lord Chancellor, in rising to present a bill to confer a jurisdiction in equity upon the county courts of England and Wales, said—These courts have at present a jurisdiction not extending beyond the authority exercised by the courts of common law. Your Lordships are aware that there is at present a great and marked difference between the subjects that are properly within the jurisdiction of the courts of equity, and those which come under that of the courts of common law. A number of matters in which the poorer classes are materially interested do not come within the range of the jurisdiction of the county courts as at present established, and therefore frequently there is a denial of justice in such cases. For instance, supposing a man in humble circumstances dies intestate; his property may amount to 120*l.*, or even 150*l.*, and he may leave a widow and children, and frequently the widow is the stepmother of the children. It constantly happens that disputes arise among the family with regard to the division of such small estates, and, unfortunately, when they do arise, the only possibility of their being determined under the existing system is by resort to the Court of Chancery. Now, although the expenses of litigation in the Court of Chancery have of late years been much diminished, yet when cases of such small amount arise, they cannot be determined in a court of equity unless they are brought to London, which requires the agency of solicitors residing in London, and also of others in the country. All the necessary communications require the concurrence of these different solicitors, and all matters which demand proof, have to be proved by evidence collected in the country and transmitted to London. The result of this system is, that in the case supposed of a small amount of property, if there be injustice, that injustice cannot be redressed, there being at present no tribunal which can take cognisance of the case, because it does not involve sufficient property to pay the expenses incurred. Another source of great injustice to the poorer classes, and which is also a denial of justice to them, arises in this way:—A dispute may take place between two tradesmen in a country town, who are in partnership, which may lead to a desire to dissolve the partnership, and wind up their affairs by having an account taken, and applying the property in payment of the joint debts. Now, that cannot be done by the county courts

\* [The return was rather fraudulent than farcical. But who was the author of the farce or fraud?]

under the present system, the only tribunal available being the Court of Chancery; and the expenses of that court are so great as to prevent resort to it in small cases, and it practically, therefore, amounts to a denial of justice. There are many other cases; such, for instance, as small mortgages, involving the necessity of a speedy appeal to some court where the proceedings are not so expensive, nor the process so slow, as of necessity characterises the superior tribunals. There, again, is an urgent necessity for some cheap and speedy remedy to be administered by tribunals which ought to be at the door of the poor man, and to which he might resort in an easy and simple manner. I will not weary your Lordships by adding other instances in support of the principle of the bill, because I believe the necessity of the measure to be generally admitted. The measure I now present to Parliament formed a part of a larger scheme laid before this House last session. My anxiety was excited very much at that time, from observing the great number of persons committed to prison by the process of the county courts, which appears to me to be injurious to the greatest possible extent, and which is founded upon a system which leads poor men into habits of great improvidence, and makes them the slave, in a great measure, of the shopkeeper. My Lords, I am sorry to say that my proposal of last year excited very grave opposition, and though I felt convinced that it would have been a great benefit to the poor man, your Lordships will recollect that I gave up that bill. But I was induced to do so in a great measure because I had succeeded in otherwise making some alterations in the proceedings of county courts which, at that time, I believed would result in much relief to the poor. I am happy to say that my anticipations in that respect have been realised; for I find, that though the rules to which I refer were only made in the end of 1863, and did not come into operation till 1864, while the number of persons actually committed to prison in 1863 was 8583, and in 1862, 9870, the number in 1864 was only 6428, being 2155 less than the number in 1863. There is another alteration in the practice of the county courts which I propose to recommend to the judges of these courts, and, though at first sight it may appear a trifling one, I think it is likely to be very beneficial in its operation. At present the order made by the county court judge may be carried into effect by a sale of the goods of the debtor, or by his imprisonment; but in the first instance it frequently occurs that a time is given for the payment of the debt by monthly instalments. Now, how does this work? Let us suppose the case of a man in humble circumstances, a labourer, for instance, who has been ordered to pay a sum in that way. It may probably happen, that if he has got a shilling, or two or three shillings, in his pocket which he has been saving up against the end of the month, when the instalment is to be paid, some temptation may arise, some emergency may occur, which he is unable to restrain himself from yielding to, and not being in a position to pay the next instalment, he is sent to prison in obedience to the law. I propose to recommend to the county court judges to introduce, as far as they can do so, the practice of ordering the instalments to be paid weekly, instead of monthly; and I have every hope that the result of this change will be to diminish the number of commitments. There is another proposal which I sought to give effect to in the bill of last year, but which is not in the measure now before your Lordships' House. Your Lordships are aware that the term after which debts are barred by the Statute of Limitations is at present six years. By the bill of last year I proposed to reduce that term to one year. I hope to introduce some general measure with the object of reducing the present term, and fixing it at two years, instead of one year—the proposal of last session. There is another proposal, with reference to actions in county courts, which I intend to make one of the subjects of a separate measure—namely, that actions shall not be brought for the score of ale or other liquor consumed in a public-house. As to the bill which I am now about to lay upon your Lordships' table, I hope it may pass through Parliament, for I feel satisfied that it will improve our county court system, and remove from it some of those imperfections which are so much complained of, and which press with severity on the humbler classes.

The bill was then read a first time.

## HOUSE OF COMMONS.—Monday, Feb. 20.

### CAPITAL PUNISHMENTS.

Mr. *Hibbert* obtained leave to introduce a bill permitting capital punishments to be carried out, under certain regulations, within the interior of prisons, and proposed to postpone the second reading till some time after Easter.

Sir *G. Grey* said this question was under the consideration of the commissioners who were inquiring into the subject of capital punishment.

### THE MARRIAGE LAW.

In answer to Sir *C. O'Loughlin*,

Sir *G. Grey* said that her Majesty had been advised to issue a commission for the purpose of inquiring into the state of the marriage law.

### LEGACY AND SUCCESSION DUTIES.

In answer to Mr. *Locke King*,

The Chancellor of the Exchequer said that the Board of Inland Revenue had no authority, nor could he give them any, to apply generally for the evidence of professional men in regard to collecting and assessing the legacy and succession duties. It would, however, be very agreeable to the Government or the board to receive the assistance of any professional men who were likely to conduct these inquiries. But he had, no doubt, the means of knowing what were the grievances complained of. The Government and the Board of Inland Revenue were cognisant of the additional charge, for instance, over and above the duties themselves. They were, of course, in contact with a body of professional men, whose duty it was to conduct that part of the business on the part of their clients, and it was probably known to the hon. gentleman, that considerable discussion took place last autumn in the public journals, which had the effect of drawing general attention to the subject. There was a certain number of particular cases which were brought before him in connexion with the correspondence inserted in the public journals, and the communications which he had had with the parties on the subject of their complaints pretty well opened to the Government the difficulties that occurred in the administration of the law. That correspondence had not all been brought to a conclusion; but as it was of a public character, there would be no objection, when it was finished, to lay it upon the table. He believed that the result of the inquiry would be, to shew that the principal part of the difficulty was inherent in the nature of the law, and of such taxes. These taxes were more obviously justifiable in principle than, perhaps, many others; but in their administration they were necessarily attended with considerable difficulty. However, he entertained the hope, that in revising a complicated system of procedure in an office of that kind, after a long period had elapsed since a review, it might be found possible to introduce many practical improvements which would afford some satisfaction and relief.

### POOR RELIEF IN UNIONS.

Mr. *Villiers* obtained leave to introduce a bill to provide for the better distribution of the charge for the relief of the poor in unions.

Tuesday, Feb. 21.

### FEES OF PARLIAMENTARY COUNSEL.

Mr. *Milner Gibson*, in answer to Mr. *D. Griffith*, said that he was led to the conclusion, from the inquiries he had made, that a counsel practising before committees of the House was at liberty to accept any fee which he might regard as a proper and adequate remuneration for the duties he was discharging. He concluded that counsel might accept any fee that the bar in general might take in the ordinary course of practice.

### THE LAW OF LIBEL.

Sir *Colman O'Loughlin*, in moving for leave to introduce a bill to amend the law of libel, and for more effectually securing the liberty of the press, said his proposal was, that no indictment should be permitted in cases of libel without the assent of the law officers of the Crown. Such a course would, he believed, prevent the powers of indictment from being abused, and would not, at the same time, deprive our law of one of its most salutary provisions. In cases of indictment, he further proposed that the defendant should be admissible as a witness. He proposed also to get rid of the anomaly at

present existing, by which the proprietor of a newspaper was liable for libellous or defamatory matter contained in the publication of speeches made at public meetings, while no action could be laid against the persons who made those speeches. By the bill, therefore, the introduction of which he was moving, a person who went to a public meeting, where reporters must, as he knew, be present, and made such a speech, would be liable, either by civil or criminal action, in the same way as if he had published the libel in writing. Such clause, however, would not affect the privileges of Parliament or courts of justice. It might be said that there would be cases in which such speeches would be made by men of straw; and although he would not deny the possibility of such cases arising, the party injured would have the power of proceeding against the offender criminally, if such a course were sanctioned by the law officers of the Crown. He proposed also allowing the plea of a belief in the correctness of a libel to be admitted as a defence. As newspapers were frequently subject to vexatious actions, he had inserted a clause providing that a plaintiff recovering less than 20s. damages should not only pay his own costs, but also the costs of the defendant, and that his own costs should not be awarded if he did not recover damages above 40s.

Leave was then given to introduce the bill.

In committee of the whole House, resolutions were agreed to in reference to the Courts of Justice Building (Deficiencies) and the Common-law Courts (Fees). Leave was given to introduce bills founded thereupon.

The bills were brought in and read a first time.

Wednesday, Feb. 22.

Mr. *Scourfield*, in moving the second reading of the Private Bill Costs Bill, stated that it was substantially the same as a bill of last year, which bore the name of Mr. *Masey*; its object being to inflict costs where cases were got up that were merely colourable, but really illusory and vexatious, by parties who put themselves in other people's way in order to be paid to get out of it.

Mr. *Denman* thought that this would be a valuable piece of legislation, so far as its spirit was concerned, but that the bill as it stood was a little too large; and he suggested some alterations in the terms.

Mr. *Milner Gibson* said he had doubts as to the expediency of this measure, suggesting cases in which it might work injuriously, and thought the House ought to be extremely cautious as to the wording of the bill, so as not to throw unnecessary obstacles in the way of valuable improvements.

The bill was read a second time, and referred to a select committee.

#### FELONY AND MISDEMEANOUR EVIDENCE AND PRACTICE BILL.

Mr. *Denman*, in moving the second reading of this bill, explained that the first portion of the measure enabling counsel for the prisoners to sum up evidence at the end of the defence was in all respects similar to the provisions of the bill of 1860. The remaining provisions had likewise for their object to assimilate the procedure in criminal cases to the practice already existing in civil actions. They related principally to different methods of testing the credibility of witnesses, and also to the proof of formal but important documents.

Mr. *Roebuck* said, this bill afforded an admirable specimen of English legislation. A rule had been established in civil cases which his hon. and learned friend desired to extend to criminal cases; but instead of saying in so many words, that all the rules of evidence now applicable in civil cases should in future be applicable to criminal cases, he felt it necessary to repeat every one of the clauses, thereby encumbering the statute-book with an unnecessary mass of verbiage.

Sir *G. Grey*, in the absence of the Attorney-General, assented to the second reading of the bill, which, he thought, would prove a very useful measure.

Mr. *Lowe* said, the suggestion of Mr. *Roebuck*, though very plausible, could not safely be acted upon, otherwise the result would be, that, as in civil suits, all admissions given by the prisoner under any circumstances would be admissible against him.

The bill was then read a second time.

Mr. *Denman* explained, that the course suggested by the hon. and learned member for Sheffield had not escaped him. But in practice such a mode of legislation proved very inconvenient, because it entailed upon the judges and the profession the necessity of referring from one act of Parliament to another to ascertain what the law really was. It was better to put in black and white what the Legislature actually meant; and then, if there were repetitions, it would facilitate the process of consolidation hereafter.

The bill was then ordered to be committed.

We have to record the death of Joseph Goodeve, Esq., of the Inner Temple, and of Lincoln's Inn, Barrister-at-Law, which took place on the 29th ult., at Clifton, near Bristol. Mr. Goodeve was a well-known and popular member of the Chancery Bar until his departure for India, and a short memoir of his life will be acceptable to many of his old friends. He was born at Gosport on the 23rd September, 1801, and after a pupillage under the learned lawyer Park, practised for some time as a conveyancer, and was called to the bar in 1829. He was a frequent speaker at the Forensic Society, and the London Debating Society, which at that time occupied a far more prominent position than at present; and he wrote numerous articles on law and on political economy in the Law Magazines and the Westminster Review, following Bentham in law, and Ricardo in political economy. One article in particular, upon imprisonment for debt, attracted much attention, advocating views then novel, but now familiar, and carried into effect by changes in the law. He was also, in later life, the author of "the Law of Evidence, as administered in England and applied to India," which is the standard work upon the subject. After attaining a very good practice at the Chancery Bar, much to the surprise of his friends, in the year 1855 he gave up his prospects here, and went out to Calcutta, in order to practise at the bar there. He obtained very fair success, and shortly afterwards was nominated by Lord Canning to a puisne judgeship. Sir C. Wood claimed the patronage, and refused to ratify the appointment; and from this unfortunate official quarrel Mr. Goodeve lost the judgeship. In 1861 he was appointed Master of the High Court at Calcutta; but his ill luck again pursued him, as the office was, in 1863, by some mistake or omission, allowed to lapse under the New Procedure Act. He was thus, at this late period of life, obliged to return to the bar, and was obtaining a large practice, when his health began to fail, and he was advised to try a voyage to England; but the Indian climate had done its work, and after a short illness he sank as above mentioned. Amongst his other avocations, he was for some time Professor of English Law at the Presidency College, and delivered a course of lectures there. He was married, in 1834, to Louisa Stuart Barker, daughter of T. C. Barker, by whom he had three children, who survive him; and he married, in 1863, a second wife, Clara Eliza, daughter of W. G. Thompson, Esq., by whom he had two children, who also survive. Mr. Goodeve was affectionately loved by his family, and he possessed the faculty of obtaining and retaining the attachment of his friends, of whom he had an unusual number, and by whom his death is sincerely regretted.

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## THE JURIST.

LONDON, MARCH 4, 1865.

THE approaching dissolution of Parliament, and consequent general election, has given full work to the revising barristers at their respective courts. Parliamentary agents of both parties have been unusually vigilant in their duties, and the result has been an addition of a large number of new decisions to those which already guide revising barristers at their respective revisions. There were as many as twenty-two appeals from the decisions of revising barristers sent up to the Court of Common Pleas in Michaelmas Term. The Registration Act, 6 Vict. c. 18, by sect. 42 provides, "that it shall be lawful for any person who shall have made any claim to be inserted in any list, or made any objection to any other person as not entitled to have his name inserted in any list, or whose name shall have been expunged from any list, and who, in any such case, shall be dissatisfied with any decision of any revising barrister on any point of law material to the result of such case, to give to the revising barrister in court, before the rising of the court, a notice in writing, that he is desirous to appeal, and in such notice shall shortly state the decision against which he desires to appeal; and the said barrister thereupon, if he thinks it reasonable and proper that such appeal should be entertained, shall state in writing the facts material to the matter in question, and shall also state his decision upon the whole case, and upon the point of law appealed against; and the said barrister shall read the statement to the appellant in open court, and shall then and there sign the same, and the appellant, or some one on his behalf, shall, at the end of the said statement, make a declaration in writing to the following effect—that is to say, 'I appeal from this decision;' and the said barrister shall indorse the same with the name of the parish or township, and the name of the appellant and respondent; and the appellant shall transmit the same to the Court of Common Pleas." It is necessary to call attention to the exact provisions of this enactment, because it has been held expressly, in the case of *Scott*, App., *Durant*, Resp., decided in Hilary Term last, and reported 11 Jur., N.S., part 1, p. 115, that the formalities required by this section must be strictly followed, and cannot even be waived by consent of the parties. In that case there was a great deal of business before the revising barrister, and the hour being late, the parties agreed to waive the formalities required by the 42nd section, and to agree upon a case, to be signed by the barrister at his chambers in London; but the Court made a rule absolute to strike this appeal out of the list, on the ground that there was no appeal before the Court. The Registration Act gives the power of granting or refusing an appeal absolutely to the revising barrister. We may, therefore, assume that most of the appeals sent up involve questions of importance in election and registration law. It may then, perhaps, be useful to glance at some

of the more important cases. The case of *Gaydon*, App., *Bancroft*, Resp. (10 Jur., N. S., 1206), is a most important decision. It will probably have the effect of adding some thousands to the number of electors in cities and boroughs. The Reform Act (2 Will. 4, c. 45), by sect. 32, which reserved the old freemen's franchise, provided that no person should be entitled to vote as a burgess in respect of birth unless his right be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman, previously to the 31st March, 1831." The facts, as stated in the case, were, that in the borough of Barnstaple there is a body of freemen; the sons of these freemen are entitled, on proving their father's marriage, that they were born of that marriage, and that they have attained the age of twenty-one years, to be admitted freemen of the borough. The claimant's grandfather was admitted a freeman in 1811; the claimant's father in May, 1831, just two months too late to claim through his father. The claimant was admitted a freeman of the borough in 1856. The Court held, that the claimant was entitled to the franchise of a freeman, as claiming through his grandfather. Mr. Justice Byles, in giving judgment in this case, observed "Unless we hold the claimant entitled to vote, we give no value to the word 'through.' Every freeman who can claim through a freeman who was a freeman on the 31st March, 1831, will henceforward be entitled to be put on the list of voters." The next case was that of *Blain*, App., *Pilkington*, Resp. (10 Jur., N. S., part 1, p. 1237). The question in that case turned on the powers and jurisdiction of revising barristers. The facts were very circumstantial, but are very likely to occur again. They were as follows:—The revising barrister appointed to revise the list of voters for the Southern Division of the county of Lancaster, finding it impossible to complete the revision within the time prescribed by the statute, applied to the senior judge of assize to appoint a coadjutor, which was done. At a court held at Bury, before the revising barrister, who was originally appointed to revise the lists, the claimant's name was objected to; the objector was present; but as neither the claimant, or any person on his behalf, was in attendance to support the claim, the revising barrister disallowed the vote, and expunged the claimant's name from the list. The revising barrister was unable to complete the revision at Bury on the day appointed for that purpose, but the list in which the claimant's name occurred was complete, and was initialled by the revising barrister. On a subsequent day the revision of the lists for the borough of Bury was continued by the barrister who was appointed to assist in the revision; on this occasion the claimant attended, and gave a satisfactory reason for his absence. It was then objected that the barrister had then no power to entertain the question. That the list was complete; besides, on this occasion, the objector was not present. The revising barrister being satisfied of the validity of the claimant's vote, restored the name to the list; but the Court of Common Pleas, held, that the revising barrister had no power to entertain the question; that the matter was "res <sup>in-</sup> <sup>at</sup> <sup>ok</sup>

cata." Erle, C.J., says, "the trial of a question between a claimant and an objector is a trial in foro contentioso." Something was made in the argument, of the revising barrister on the first occasion having initialled the list, but it is clear from the judgment of Chief Justice Erle, that the ratio decidendi was the fact, that on the second occasion the objector was not before the Court. The next case was that of *Powell*, App., *Guest*, Resp. (10 Jur., N. S., part 1, p. 1238). It was a question of "residence." The claimant had resided in a borough until the 7th February, 1864, when he was convicted of a misdemeanour, and sentenced to six months' imprisonment. The gaol was more than seven miles from the borough. The claimant while in gaol kept a house in the borough, but no family had resided in it, but it was occupied by his servant. The cases of bankrupts and persons in prison for debt were referred to in the course of the argument. The Court held, that the claimant had not resided in the borough for the six months previous to the 31st July, and was therefore, not entitled to have his name on the list of persons qualified to vote. Chief Justice Erle, in the course of his judgment, pointed out a distinction between persons who had the power of returning to their residence whenever they pleased, and persons who were prevented from returning by the consequences of their own wrongful acts. The decision must be considered satisfactory. A person who commits a misdemeanour had certainly better not exercise the franchise. He cannot be said to be a proper person to vote at an election, for a constituent part of the governing body of the country. A person who cannot keep the law had better leave the making of the law, whether directly or indirectly, to others. The next case was *Steele*, App., *Bosworth*, Resp. (10 Jur., N. S., part 1, p. 1239), which was a claim to the county franchise by certain inmates of a charitable institution, called the Bottesford Hospital, established in the year 1692 by a Duke of Rutland, for the benefit of twelve poor men, to be nominated by the Duke of Rutland for the time being, and removable by him in case of misconduct. The revenues of the hospital arose out of land vested in trustees for the purposes of the hospital. Each inmate had a separate room, and received certain allowances, amounting in the whole to more than 40s. per annum, and it was contended that each inmate was entitled to vote as a 40s. freeholder; but the Court held, that the inmates had no interest whatever in the lands of the charity, but only a right to certain allowances payable out of the rent of the lands; and Chief Justice Erle referred to the case of *Freeman*, App., *Gainsford*, Resp. (11 C. B., N. S., 68), where Mr. Justice Williams says, on facts, almost similar, "The question is, whether the claimant has any property. The occupants are to take for their lives; but it does not therefore follow, that each particular room is assigned to each of them as owner for his life. It seems to me to be clear, that he has not the right of an equitable owner for life. Having a right to be so supplied, does not constitute them equitable owners of the rooms in which they are placed." The next case was *Powell*, App., *Bradley*, Resp. (10 Jur., N. S., part 1, p. 1241). There the Court held, that "a voter need not have been of full age during the whole period of twelve months' occupation previous to the 31st July, as required by the 27th section of the Reform Act. In this case, the claimant's vote for the borough of Kidderminster was objected to, on the ground that he only attained the age of twenty-one in the March before the revision, and that he, therefore, could not have occupied his house twelve months previous to the 31st July. It was contended on behalf of the appellant, that the Reform Act, in sect. 27,

provides, that "such person" shall have occupied for twelve months previous to the 31st July;" and that by "such person" was meant, as pointed out by the act, "a male person of full age." The revising barrister held the claimant entitled to be upon the list, and the Court of Common Pleas upheld his decision. As Mr. Justice Byles said, if the Court decided that the claimant must have been of full age all the time he occupied, the result would be to postpone the claimant's right to vote till he attained the age of twenty-two. It is remarkable, that some of the points raised in the foregoing cases had never been raised even incidentally before; and in some there were no authorities whatever to cite. The decision in *Gaydon*, App., *Bancroft*, Resp., will add large numbers to the lists in some cities and boroughs. *Blain*, App., *Pilkington*, Resp., shews what is the nature of an inquiry before a revising barrister; and *Powell*, App., *Bradley*, Resp., is an authority to shew that a claimant need not have been of full age during the whole time he has occupied a tenement, provided he be of full age at the time of the revision.

It will be seen that the Lord Chancellor's bill to confer on the county courts a limited jurisdiction in equity is more extensive in its scope than the bill of the last session. It provides, that "Every suit or matter that may now be commenced and prosecuted in the High Court of Chancery, may hereafter be brought and prosecuted in the county courts," subject to certain limitations as to the amount or value of the matter in question, and with the exception of the jurisdiction of the Lord Chancellor and the Lords Justices in lunacy. As it is proposed that the equity jurisdiction of the county courts shall commence on the 1st October next, we recommend the learned judges not to rely on the wisdom of Parliament, but to enter upon their equity studies at once. Upwards of fifty learned and elderly gentlemen, calling frantically for equity and conveyancing coaches, will furnish a novel and interesting spectacle. Let us hope that under the power to make rules and orders, the committee of judges, with the sanction of the Lord Chancellor, will be able and willing to appoint a staff of "conveyancing and equity counsel to the county courts."

Not the least difficult part of the task imposed upon the learned judges is the interpretation of the act itself. For instance, the first act that occurs in Mr. Morgan's Collection of Statutes relating to the Practice and Jurisdiction of the Court of Chancery, is the Custody of Infants Act (2 & 3 Vict. c. 54), giving jurisdiction as to the custody of children under the age of seven years, irrespective of property. The bill says, that county courts shall have jurisdiction in all matters relating to the custody of infants where the annual sum applicable to the maintenance of the infant shall not exceed the sum of 20l. per annum. Does this give jurisdiction under the act of 2 & 3 Vict., if no fund at all is applicable to the infant's maintenance; that is to say, in almost every case which can arise under that act, both parents being living? May the most exalted of her Majesty's subjects be brought before any one of the county courts in England and Wales (for in this matter of the custody of infants the choice of the court is left open) to contest the right to the custody of his children?

The next act in Mr. Morgan's Collection is the Perpetuating of Testimony Act (5 & 6 Vict. c. 69), under which, as extended by Lord Westbury to the county courts, any testimony relating to his Lordship's title or estates, or to any other title or estates, may be laid up or "perpetuated" in any county court.

The next act in Mr. Morgan's book is the Attorneys and Solicitors Act (6 & 7 Vict. c. 73), under which, in conjunction with the proposed act, solicitors' bills to any amount will be taxable in any county court. For as the "matter" will be "commenced" by the client, with a view to the reduction of the solicitor's demand, it will not be within the provision limiting the sum "demanded or sought to be recovered by the plaintiff" to 100*l.*, or within any other limitation in the bill.

The provisions of the Lands Clauses Consolidation Act come next, under which compensation money for lands may in certain cases be paid into the bank. It seems that money so paid in may be got out upon petition to the judge of any county court, if the amount do not exceed 100*l.*

Under the Trustee Act, 1850, it seems that the judge of any court within the district of which the trustees, or the cestuis que trust, or any one of them respectively, usually reside, may appoint a new trustee, make a vesting order &c., if the estate or property, the subject of the trust, does not exceed 300*l.* in value. If an order is made, and it subsequently appears that the value of the trust property exceeded the limit, the order will be wholly invalid; for the 5th section of the bill does not apply after the matter is out of court. In investigating titles, the inquiry as to the total value of the trust property, in cases of appointments of new trustees and vesting orders made by judges of county courts, will form a handsome addition to the duties of the purchaser's solicitor.

Under the Improvement of Jurisdiction of Equity Act (15 & 16 Vict. c. 86), it may be that the judges of the county courts would have authority to direct evidence to be taken on oath before notaries and others abroad, and otherwise, in manner provided by that act; but the penalties imposed by the act for false swearing &c. would be inapplicable. And it seems that affidavits sworn before commissioners to administer oaths in Chancery would not be available in the county courts.

The bill gives to the county courts unlimited jurisdiction to enforce by injunction contracts not to carry on a business or profession within certain limits; so that *Mad. Titiens* or *Baron Rothschild* might be brought before such a court upon a question of singing at *Covent-garden*, or carrying on business in the city. Again, a partnership of the most lucrative and expensive nature, between brokers or commission or insurance agents, might be dissolved in a county court, if the joint capital and credits did not exceed 500*l.* On the other hand, jurisdiction in matters of discovery is given without limit.

Lord Westbury, with a lively recollection of the persuasive power of fees, provides, that for equitable business transacted in the county courts (in addition to fees to the registrars and high bailiffs, according to a scale to be settled by the Treasury, with the consent of the Lord Chancellor) there shall be taken fees in augmentation of the salaries of the judges, within the limit of 1600*l.*, the amounts of such fees being subject to the sole discretion of the Lord Chancellor.

The careless and unskilful construction of the bill is of a piece with the folly of the design. Whether the existing distinction between the two sides of Westminster Hall as to the rules of right ought to be preserved, is a question upon which, perhaps, professional opinion is sufficiently settled to justify careful

legislation. But it is obvious that so great a change—going down to the ancient depths and foundations of the law, and extending to the minutest ramifications of its modern development, would require the highest jurisprudential and legislative ability to initiate, and the greatest judicial learning and capacity to carry into effect. In such ability the Lord Chancellor is notoriously deficient, as he has, from his first assumption of the uncongenial character of a law reformer, most successfully demonstrated. Indeed, for aught that appears, he has not yet realised a conception of the essential distinction, both in theory and for practical purposes, between those functions of the Court of Chancery which are judicial and remedial, and those which are merely administrative. We will not insult the many learned and able men who are to be found among the judges of the county courts, by comparing their unfitness (in their present position) to perform the task of working out the fusion of law and equity, with the incapacity of Lord Westbury to set them such a task. But the order of county court judges also includes, we fear, many who might justly be subjected to such a comparison. However that may be, it certainly is not in the county courts that the experiment of the fusion of law and equity should be made, for the successful conduct of which, all the judicial and forensic ability of Westminster Hall would be barely adequate.

The expediency of transferring the administrative functions of the Court of Chancery in small matters to the county courts, is a practical question which might properly be referred to a commission of inquiry. It will probably be found that the present system might be greatly improved (retaining in all cases the central control of the judges and principal officers of the Court of Chancery), by establishing some provincial branches, and by investing the county court judges with some of the powers and functions now exercised and discharged in chambers by the equity judges and their clerks.

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#### WIFE'S SEPARATE REAL ESTATE, AND HER POWER OF ALIENATION.

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[From a Correspondent.]

A CASE of first importance on this subject has lately occurred before the Lord Chancellor. It is the case of *Taylor v. Meads*, on appeal from the Master of the Rolls (reported in the current number of THE JURIST (11 Jur. 166), and 13 Weekly Rep. 394). The point to which we are about to refer was not argued before the Master of the Rolls, but his decision upon another point having been reversed by the Lord Chancellor, this question arose—namely, whether, where real property is devised to trustees and their heirs, upon trust for a married woman, her heirs and assigns, with a declaration that the said premises should be for the separate use of the married woman, free from the debts, &c. of her husband, she could, by force of her *jus disponendi*, devise her estate while covert? And depending on the same principles was the question, whether she could by deed *inter vivos*, not acknowledged under the act 3 & 4 Will. 4, c. 74 (Fines and Recoveries Act), dispose of her equitable fee-simple? The Lord Chancellor decided both these questions in the affirmative, not feeling any doubt upon the subject, and, in his own words, held, "that a feme covert, not restrained from alienation, has, as incident to her separate estate, and without any express power, a complete right of alienation by instrument *inter vivos* or *will*." We are by no means inclined to disagree with this decision, when we look at

the question as one of policy; and, indeed, we shall be glad to find that the doctrine as to the separate estate of a married woman, which has been so often the source of litigation and the most refined argument, can be placed on the clear, broad grounds enunciated by the Lord Chancellor. His Lordship says, "With respect to separate property, the feme covert is, by the form of trust, released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is sui juris. To every estate and interest held by a person who is sui juris the common law attaches a right of alienation." Both these propositions we believe to be perfectly correct, and borne out by decisions, and yet we fear that the conclusion drawn from them by the Lord Chancellor, namely, that therefore the feme covert can deal with the entire fee-simple as if she were a feme sole, is illogical. His Lordship's fallacy seems to be this—he spreads the separate use clause over the *entire fee*, instead of over that portion of it only which requires protection from marital rights and marital influence, namely, the estate for life of the wife; and his syllogism would be perfect if his decision as to the power of alienation were confined to the estate for life of the wife. The original innovation by our courts of equity on the common law in favour of separate use was solely for the purpose of protecting the wife from the influence of the husband, and to secure her a separate provision; and the contest as to this was sharp enough between our courts of law and equity; but in those days the equitable innovation was never attempted to be applied *ultra* the estate for life of the feme covert; and, indeed, the principle and object of the innovation did not apply. His Lordship continues to observe—"But it would be contrary to the whole principle of the doctrine of separate use, to require consent or concurrence of the husband in the act or instrument by which the wife's separate estate is dealt with or disposed of; that would be to make her subject to his control or interference." There seems to have been here some part of his Lordship's reasoning omitted from the report; this passage evidently points to the fact, that by the 77th section of the 3 & 4 Will. 4, c. 74, the consent of the husband is rendered absolutely necessary to the deed to be acknowledged by a feme covert; but there is no allusion to this in the report.

We agree with the Lord Chancellor that this provision of the statute could have no application to *separate estate*. But here, again, the question arises, what is the extent of the *separate estate*? If it only extends to the life estate of the feme, as we have suggested, then there is nothing contrary to the doctrine of separate use in requiring the consent to, or concurrence of, the husband in a deed, by which the wife deals with her reversion or remainder; and no argument can be drawn from this section in favour of his Lordship's conclusion. We believe that it will, upon the examination of the authorities, be found to be indisputable, that the imposition of the separate use clause has never been held to apply to more than the life estate of the feme; indeed, it seems to us, that, viewing the question from an *a priori* point of view, it would be absurd to suppose that the original innovation on the common law could have been intended by our courts of equity to have been carried so much further than the necessity demanded; and in confirmation of this view we have the fact, that when it became doubtful whether the mere separate use clause was effectual for the purpose of protecting the wife's estate, Lord Thurlow contrived the clause against anticipation in addition, which would have effectually defeated the *jus disponendi*, not only over the estate

for life of the wife, but her estate in remainder in fee. As from *a priori* reasoning, so from the authorities, we think it settled that the effect of the separate use clause extends no further than the life estate of the feme.

It has often been decided, that real property settled to the separate use of a feme covert is liable, as such, to her separate debts, so far as the rents and profits of that estate extends; but it has never been argued, much less decided, that such debts bind the fee-simple. The principle of such decisions is this, that as a feme covert is unable to contract debts, except as regards her separate estate, and such debts are looked upon as debts not of the feme but of the separate estate, the moment that separate estate ceases, which it does upon the death of the feme, there ceases to be any estate liable to those debts. We are far from thinking that this is a desirable state of the law; but yet it follows, as a necessity, unless the large and liberal view of the Lord Chancellor be right; for it would be absurd to hold that the mere debts, or quasi debts, of the feme covert could bind the fee-simple of the feme, if a deed unacknowledged could not. But it seems to us to follow, that if the feme covert can by simple deed unacknowledged alienate her fee-simple, her separate debts must bind the fee in equity, just as much as if she were a feme sole.

According to the report of the case now under our consideration, the Lord Chancellor contented himself with enunciating a few principles of the doctrine of separate use, but he did not examine the authorities, and he only named the following cases:—*Peacock v. Monk* (2 Ves. 101); *Tullett v. Armstrong* (1 Beav. 1; 4 My. & C. 390); *Baggott v. Mann* (1 Ph. 627); *Atchison v. Le Mann* (23 Law T. 302); and *Adams v. Gamble* (11 Ir. Eq. Rep. 269; 12 Ir. Eq. Rep. 102); and citing the following passage from Lord St. Leonards' *Treatise on Powers*, 8th ed., p. 173:—"Where a married woman has property settled to her separate use, without any restraint on alienation, she is deemed a feme sole, and may dispose of it accordingly." Now, doubtless, this passage correctly states the law, but it does not go far enough to support the Lord Chancellor's decision. What is the meaning of that small word "it"? We take it that it means such property as she is entitled to, and is affected by the separate use clause; so that we come back to the question, where the estate is a fee, and the feme has it to her separate use, does the separate use affect that portion of the fee subsequent to her own life estate? If it does not, the passage from Lord St. Leonards does not help the argument of the Lord Chancellor.

Let us now turn to the cases relied on by the Lord Chancellor. In *Peacock v. Monk* (2 Ves. sen. 190) the house which was the subject of the suit had been purchased by the feme covert, out of her separate savings, and was conveyed direct to her and her heirs, so that there was no separate use imposed; but some of Lord Hardwicke's observations on the subject of separate estate are most valuable. His Lordship says, p. 190, "Agreements for settling estates to the separate use of the wife on marriage are very frequent, relating both to real and personal estate. As to personal, undoubtedly, where there is an agreement between husband and wife before marriage, that the wife shall have to her separate use, either the whole or particular parts, she may dispose of it by an act in her life or will; she may do it by either, though nothing is said of the manner of disposing of it; but there is a much stronger ground in that case than can be in the case of real estate, because that is to take effect during the life of the husband; for if the husband survives, he is entitled to the whole, and none can come into a share with the

husband on the Statute of Distribution. Then such an agreement binds and bars the husband, and consequently bars everybody. But it is very different as to real estate; for her real estate will descend to her heir-at-law. . . . Undoubtedly, on her marriage, a woman may take such a method, that she may dispose of that real estate from going to her heir-at-law; that is, she may do it without a fine; but I doubt whether it can be done but either by way of trust or of power over an use. In the first instance, suppose a woman having a real estate before marriage, and either before or after marriage by a proper conveyance (if after the marriage it must be by fine) conveys that to trustees, in trust to herself during her coverture for her separate use, and afterwards that it should be in trust for such person as she shall by any writing under her hand and seal, or in nature of a will, appoint; and in default of appointment to her heirs; she marries, and makes such appointment as that described: *that is a good declaration of the trust*; and this Court would support the trust . . . so may it be done by way of power over an use."

We have quoted this latter paragraph of Lord Hardwicke's judgment fully, as it seems to us that the Lord Chancellor has, in the case of *Taylor v. Meade*, attributed too much weight to the circumstance of the legal estate being in trustees. His Lordship says—"The whole lies between a married woman and her trustees, and the true theory of her alienation is, that any instrument, be it deed or writing, when signed by her, operates as a direction to the trustees to convey or hold the estate according to the new trust which is created by such direction. This is sufficient to convey the feme covert's equitable interest."

This seems to us to be directly opposed to the opinion of Lord Hardwicke, for he grounds the effect in equity of the feme's direction of the trust, expressly upon the assumption that there was an express power to direct the trust, just as it would be necessary to have the express power to appoint a use. In truth, the effect of the Lord Chancellor's decision in *Taylor v. Meade*, is to give to the mere words "separate use" the same ample effect as if there was in the deed the fullest form of words which a conveyancer could devise giving the feme powers of disposition. It may be said, that as the doubt expressed by Lord Hardwicke (*supra*), whether an anti-nuptial contract between husband and wife, that she shall have her real estate to her separate use, would bind her heir in case of her devising it away, has been cleared up by the decisions of *Wright v. Cadogan* (1 B. P. C. 486) and *Rippon v. Dawding* (Amb. 565), in favour of the wife's power to devise; therefore, where there is a limitation to the wife's separate use, a multo fortiori, she may devise. But when these cases are examined, it will be found that the anti-nuptial contract was, *that the wife should have power notwithstanding coverture to dispose of her property by deed or will*. And Mr. Roper, in his Treatise on Husband and Wife, vol. 2, p. 178, explains the principle of those cases. He says, "The agreement having been made before marriage, at a period when the wife was able to contract; and as it clearly appears to have been the intention of the parties *that the wife would reserve to herself a power to dispose of her own lands during the coverture*, she therefore, and the persons claiming under her appointment, have a right to the interposition of a court of equity to give full effect to the marriage agreement . . . the wife might have obliged her husband to concur in a fine and settlement of the estate pursuant to his engagement."

The only result, therefore, of those two cases is, that a court of equity, if called upon to enforce such an anti-nuptial contract, would order such a settlement

as would give the wife power to dispose of her property by deed or will, and we submit that it would order the insertion, in such a settlement, of the ordinary powers to appoint by deed or will. Those decisions, therefore, do not touch the present question.

In the report of *Peacock v. Monk*, the reporter states that a case was cited at the bar, "where a real estate of a wife was by settlement before marriage secured to her separate use, and as if she was a feme sole, but no power given her to devise it; and it was insisted, that as to the trust of this estate she was to be considered as a feme sole in this court; and compared to personal estate the separate property of the wife, to which property it was incident that she may make a will, or appointment of it. It was said, that as to land there was a difference, for that the husband could not give her power to make a will of lands; and that the heir-at-law was concerned in not being disinherited, but in such a way as that she should be secretly examined; and in that way did Willes, C. J. (who said he had consulted the other judges about it), determine."

The next case referred to by the Lord Chancellor is *Tullett v. Armstrong* (4 My. & C. 345); the question, as every lawyer knows, was solely as to the validity of the clause against anticipation, superadded to a separate use of real estate given to a feme sole, and whether upon marriage that clause took effect; which question was decided in the affirmative. But the case is valuable besides, for Lord Cottenham's review of the doctrine of separate estate. There is, however, not one word in favour of the decision of the present Lord Chancellor; but in some instances Lord Cottenham's statement of the law is against him; for instance, at p. 393 he says, "When once it was established that the separate estate of a married woman was to be so far enjoyed by her as a feme sole, as to bring with it all the incidents of property, and that she might, therefore, dispose of it as a feme sole might do, it was found that, to secure the desired protection against the marital rights, it was necessary to qualify and fetter the gift of the separate estate by prohibiting anticipation." It is quite clear from this, that Lord Cottenham was speaking only of the estate which, by the imposition of the separate use, had interfered with the marital rights, that is, the life estate of the wife.

The next case referred to by the Lord Chancellor is the case of *Baggott v. Moss* (1 Ph. 627). The question there was simply, whether a clause in restraint of alienation annexed to a legal devise in fee of real estate to a married woman for her separate use was effectual as regards the whole fee during the coverture; and Lord Cottenham held, affirming Vice-Chancellor Knight Bruce (1 Col. C. C. 138), that the clause was effectual. His Lordship, in a very short judgment, said, "After the case of *Tullett v. Armstrong*, there can be no doubt about the doctrine of this Court respecting the property given to the separate use of a married woman. And it is clear that that doctrine applies as much to an estate in fee as to a life estate. The object of the doctrine was to give a married woman the enjoyment of property independent of her husband; but, to secure that object, it was absolutely necessary to restrain her during coverture from alienation. The reasoning evidently applies to a fee as much as to a life estate; to real property as much as to personal. The power of a married woman, independent of the trust for separate use, may be different in real estate from what it is in personal; but a court of equity, having created in both a new species of estate, may in both cases modify the incidents of that estate."

Now, can it be inferred from this, that his Lordship was of opinion that, had the clause against anticipation been omitted, the wife could, without the solemnities of a fine formerly, or of a deed acknowledged since the



3 & 4 Will. 4, have effectually conveyed away her fee-simple?

We submit that it would be a very extraordinary result of a doctrine of equity, established for the protection of the married woman against the rights and the control of the husband, to throw her more under his control, and enable her by a simple deed to alienate, not only her life estate but also the remainder of her fee, which the common law as well as courts of equity considered hers, but the common law practically protected her from her husband's influence, by requiring the formalities of a fine. Such could never have been the original intention of our courts of equity in introducing the doctrine of separate use, and is clearly against Lord Hardwicke's view of the doctrine. But are we left in doubt whether Lord Cottenham meant that a feme covert could alienate her separate estate in fee by a deed unacknowledged? We think not; for upon counsel's drawing his Lordship's attention to the fact, that the Irish Fines and Recoveries Act, 4 & 5 Will. 4, c. 92, s. 69, contained a proviso, that the clauses relating to conveyances by married women should not apply to cases in which there was, by the terms of the gift, a restraint on alienation, whereas there was no such proviso in the English act.

His Lordship observed, "that the Irish act was subsequent in date to the other, and that he took that clause to be an expression by the Legislature of what was meant by the former act."

Now, to our minds, this conclusively shews that his Lordship considered that separate estate [commonly called such] of a married woman was within the Fines and Recoveries Act, for if not the above proviso would have been unnecessary, as restraint against alienation could not exist but with reference to separate estate.

We are precluded, therefore, from reasoning on Lord Cottenham's decision in favour of the clause against alienation extending to the whole fee, in this manner: A feme covert, having property in fee-simple to her separate use, is in equity considered a feme sole for all purposes of alienation. The clause against alienation and the separate use clause when together are co-extensive and coterminous. The clause against alienation extends to the entire fee. Ergo, the feme covert, having property in fee to her separate use absolutely, is in equity considered a feme sole as to the entire fee.

We now come to the case of *Atchison v. Le Mann* (23 Law T. 302), and heard before the full court of appeal, consisting of Lord Cranworth, C., and the Lords Justices; but although it seems, from Lord Justice Turner's judgment, that the question, whether, where there is a limitation in fee to a married woman for her separate use, she can devise it, was argued in that case, yet his Lordship also states, that it was unnecessary to decide it. However, on that point he said, "But I am very strongly inclined to think she could have done so; and as at present advised, I should so decide the point, if it were necessary to decide it. It being settled, that an estate in fee may be limited to the separate use of a married woman, thus giving her an absolute ownership, she must, I think, have all the rights of disposition which are incident to the ownership." There can be no doubt that this was a very strong extra-judicial opinion upon the point, if such words were ever uttered; but from what immediately follows these words, it is manifest that there is some material error in the report, as the cases of *Stead v. Clay*\* (1 Sim. 294) and *Wainwright v. Hardisty* (2 Beav. 365) do not bear upon the proposition for which the reporter makes the Lord Justice cite

them; and, further down the report, makes the Lord Justice misstate the doubt Lord Hardwicke had in *Peacock v. Monk* (ubi sup.), jumbling up "wife" for "heir," and "heir" for "wife." We may here observe, that on the argument of *Taylor v. Meads*, the case of *Field v. Moore* (7 De G., Mac., & G. 691) was not cited, although in that case there were some dicta of Lord Justice Turner, or approval of the statement of the law by other judges equally strong the other way from the dicta attributed to him in *Atchison v. Le Mann*.

The last case referred to by the Lord Chancellor is *Adams v. Gamble* (12 Ir. Eq. 102), which was evidently treated by his Lordship, as it is in fact, the first direct authority upon the point. The case came originally before the Lord Chancellor (11 Ir. Eq. 269), when his Lordship held, that a feme covert, having a descendible freehold to her separate use, could not alienate it, except by fine or deed acknowledged. From that decree there was an appeal, heard before the Lord Chancellor, the Lord Justice of Appeal, and Baron Hughes, when the Lord Chancellor held to his opinion, and the two other members of the Court reversed his decision.

It is curious to observe, that the majority of the Court in that case seem to consider that they were only deciding in conformity with previous decisions; and yet this very decision forms the sole direct authority upon the point in *Taylor v. Meads*.

The Lord Justice of Appeal and Mr. Baron Hughes rely much upon the dicta of Lord Justice Turner in *Atchison v. Le Mann*; and Mr. Baron Hughes, after reading the report, says, "I quite concur in this expression of opinion, and it appears to me to be in accordance with the principle upon which the recognition of a separate estate has always proceeded."

There was one case of very late occurrence, which was cited before his Lordship on the argument of *Taylor v. Meads*, and which we think deserved consideration; we mean the case of *Lechmere v. Broderidge* (32 Beav. 353; 11 Weekly Rep. 814), containing a most carefully considered judgment of Sir J. Romilly, M.R. In that case the Master of the Rolls held, that where real property is given to trustees, upon trust for a married woman for life to her separate use, without a clause against anticipation, she can dispose of her life estate by a deed not acknowledged, but that where the fee-simple is given to the separate use of a married woman, she cannot dispose of the fee otherwise than by a deed duly acknowledged, under the 3 & 4 Will. 4, c. 74. His Honor says, "The question is, whether the words 'separate use,' as applied to a devise of freehold hereditaments to a married woman in fee-simple, have such an effect as to give her a different quality of estate, in the contemplation of equity, as to the manner in which she may alienate the same, from what she would have taken in the same hereditaments, if the words 'separate use' had been omitted from the devise. I am of opinion, that in such a devise the words 'separate use' have, as regards the alienation of the inheritance of the property, no such practical effect; that if a married woman had attempted, before the statute, to dispose of such lands, she must have levied a fine; and that, since the statute, an acknowledgment, under the 77th section, is equally necessary."

His Honor then observes, that the contention of the other side is, "that the words 'separate use,' as regards alienation inter vivos, have the following, and no other, meaning, viz. 'I give my estate to A. and her heirs for ever for her separate use; that is, I do so in order to enable her to dispose of it without any acknowledgment under the statute.' I am of opinion, that it is not in the power of any testator to avoid the statute."

\* Probably *Stead v. Creagh* (9 Mod. 43) was referred to.



His Honor then very pertinently observes:—"The common law, independently of equity, treats the wife as the separate owner of the land, so far as the inheritance in it is concerned; that does not pass to her husband; and the common law provided a mode by which she might dispose of that which was her separate interest in her land in the lifetime of her husband, namely, by fine or recovery, and not otherwise. For this common-law conveyance the statute substitutes a deed acknowledged. . . . The effect of those words, 'separate use,' is this—they apply to and bar the husband from receiving what, without such words, he would have received, viz. the rents of the property during the life of the wife, and during his tenancy by the curtesy in case he had a child by her. *But how can these words 'separate use' add anything to what was her own separately and distinct from her husband; or how can they enable her to dispose of what is her separate property, without such words, in a different way from what she could have done before the statute?*" His Honor then observes upon *Atchison v. Le Mann*, and excused himself from following *Adams v. Gamble*, which he would have felt bound to do had the Court of Appeal been unanimous; and he concluded by holding that the words of the 77th section of stat. 3 & 4 Will. 4, c. 74, were applicable to an estate in fee-simple of a married woman, though given for her separate use.

We have seen in a very respectable contemporary (7 Sol. Journ. 640) an article upon this decision of the Master of the Rolls, in which a different view is taken from that which we have above expressed. Had the writer made out what he, in effect, there states to be the law—namely, that the whole inheritance of a wife in fee-simple estates is vested in the husband, and that "at the present day the conveyance by the husband of his wife's inheritance at law is an absolute conveyance of the whole inheritance," we should be inclined to say that he had proved his case; but the only argument suggested in support of such a proposition is, that the husband, by feoffment or fine of the wife's estate, could take away the right of entry of the wife or her heir; and from this he argued that the feoffment or fine operated as a conveyance of the legal fee. It is only necessary, in answer to this, to remind our readers that the feoffment or fine in such a case owed its entire effect, not to its conveying a legal estate, but to its tortious effect in creating a new estate, which might be ripened into maturity by non-claim.

In conclusion, we must express a hope that, either in the case of *Lechmere v. Brotheridge*, *Adams v. Gamble*, or *Taylor v. Meads*, the stake may be of sufficient amount to carry an appeal to the House of Lords. As in a matter of daily occurrence, it is most desirable that so important a question should be settled by the decision of the highest tribunal.

[It is right that both sides of a question so important as that which is the subject of the above communication should be fairly heard, and we willingly make room for our correspondent's able argument; but we must be permitted to say that we have no doubt as to the propriety of the Lord Chancellor's decision, and principally for the reasons stated by a correspondent in 9 Jur., N. S., part 2, p. 244 (and see p. 277, where "opposite," in the 12th line of the paragraph, should be "apposite").—ED.]

Samuel Horace Clarke Maddock, of 3, Spring-gardens, Westminster, has been appointed to be a commissioner to administer oaths in common law courts, and to take acknowledgments of deeds to be executed by married women.

## Correspondence.

### PROBATE DUTY PAYABLE IN RESPECT OF LEASEHOLDS ON MORTGAGE.

TO THE EDITOR OF "THE JURIST."

SIR,—Permit me say a few words in reply to your observations on the letter you were kind enough to insert in last week's "JURIST."

When a leasehold estate charged with a mortgage debt is valued as an equity of redemption only, to say the deduction is made, not for a debt, but for a charge, sounds rather like a *petitio principii*; and if the act does not say that no deduction is to be made for a charge, it does say that no deduction is to be made for a debt.

It is admitted that the sum secured is a debt, but then it is said it is also a charge, as much so as rent is a charge, or the portion in the case put is a charge. Now it is a personal debt, for the payment of which the leasehold is only a security. It is a debt which the mortgagee may require to be paid out of the general assets. It is, when secured by covenant, a debt the executor must pay out of the general assets, before he pays any simple contract debt. Rent, on the contrary, is primarily payable out of the property. It is, so to speak, a part of the thing itself reserved by the lessor, and the covenant to pay it is only a security. So, in the supposed case, the portion is strictly and simply a charge on the leasehold, and the brother is under no personal obligation to pay it. His interest is the difference between the portion and the value of the leasehold, just as the value of his interest would be one-half that of the leasehold, were he and his sister tenants in common. When the portion is paid, it is paid *quâ* charge, not *quâ* debt; and there are no words in the act forbidding it being deducted. But the act says expressly debts are not to be deducted.

Again: is it quite accurate to say the debt may be paid out of the property charged or the general assets, at the option of the executor? He cannot compel the mortgagee to take the property in satisfaction of the debt, or any part of it; nor can he discharge the general assets by selling the property subject to the mortgage; nor can he, properly speaking, sell free from the charge, unless he first pays the debt, or makes an arrangement with the mortgagee.

For the purposes of the act, the mortgage, whether legal or equitable, is, I submit, to be regarded as courts of equity regard it; that is, the mortgagee is to be considered as the owner of the debt, and the mortgagor as the owner of the property; the debt being considered the principal, and the land the accessory. An equity of redemption, therefore, is something more than a mere right to take back the property. And if, after the testator's death, the executor pays the debt out of the general assets, he relieves the property of an incumbrance, but does not change the nature of the testator's equitable estate or interest. He takes the leasehold out of pledge, as he might take a picture or other chattel out of pawn, but he does not thereby alter the intrinsic value of that estate or interest of which equity considers the testator died possessed.

Lincoln's-inn, March 2.

S. S. W.

[We are not convinced by our learned correspondent's argument; but we do not think we can usefully add to our further remarks, beyond referring to Locke King's Act, which seems to us to conclude the case against the Crown, but which we did not before refer to, because we thought it better to rely on general principles.—ED.]

## Imperial Parliament.

HOUSE OF LORDS.—Friday, Feb. 24.

ATTORNEYS AND SOLICITORS' COSTS.

*The Lord Chancellor*, in presenting a bill to amend the law relating to attorneys and solicitors, said—The present principle of remunerating attorneys and solicitors is one which requires amendment, and is one of the instances of the old and absurd practice of the law interfering to regulate the rights of labour, and of determining the manner in which the person employed shall be remunerated. According to the present system, when an attorney is employed by a client, his remuneration is governed by certain fixed rules, from which it is impossible for either party to depart. For instance, supposing a solicitor be employed to collect and distribute the assets of a debtor among his creditors, on the terms of receiving one-sixth of the sums so distributed as his remuneration, such a contract would not be legal, and could not be enforced between the parties. Another objection to the present practice is, that the remuneration is regulated by the quantity of writing required, so that, instead of being remunerated according to the skill, care, time, and labour expended in the conduct of the case, the solicitor is paid by the yard. This practice is most mischievous, as it leads to a great deal of that verbosity and tautology in legal documents which has thrown so much opprobrium upon a numerous body of practitioners. The bill proposes to deal with these defects by a very simple remedy—namely, by allowing the attorney and his client to enter into a contract, specifying the remuneration to be given for the work to be performed. Of course, the bill requires to be looked at with care and attention, and I feel assured that I shall have the assistance of your Lordships, and more especially of my noble and learned friends, in my endeavour to accomplish this great object. It is singular, that until I brought forward my bill last session, no attempt should have been made to remedy the acknowledged and admitted defects I have referred to.

The bill was then read a first time.

HOUSE OF COMMONS.—Tuesday, Feb. 28.

THE NEW LAW COURTS.

*Mr. Kimmins* moved, that it be an instruction to the select committee on the Courts of Justice Concentration (Site) Bill, that they have power to make provision for appropriating or obtaining sites, and for the erection of lodging-houses or other suitable dwellings for the working classes proposed to be displaced by the said bill. He had no desire to say a word against the admirable measure for the concentration of the law courts. He believed the site was very well adapted to the object, and that the erection of the courts there would open up a neighbourhood which needed improvement. The promoters, however, had been guilty of some neglect towards the poor people who resided in that quarter. A return had been presented to the House of Lords, which gave the number of houses to be pulled down, in order to make way for the courts of law, as 151, and the number of persons displaced as 302. This statement was obviously so absurd, that another return was called for, and this was nearer the mark. From the second return, he learned that the number of houses to be removed would be 151, inhabited by 1812 people. Even this, however, was still less than the actual number, as he was satisfied from having himself visited the spot. He had obtained from *Mr. Abraham* some trustworthy information on the subject. That gentleman said, that at least 123 dwelling-houses would be destroyed, inhabited by about 3070 persons purely of the labouring class. Moreover, there were lodging-houses in the district, accommodating from 50 to 60 people nightly. One of the city missionaries confirmed these figures as being not at all exaggerated, and probably the number of people displaced would be not less than 4000.

*Mr. Cooper* said it was impossible to devise a remedy that would not increase the evil. He hoped the motion would not be pressed.

The motion was supported by *Mr. Watkin*, *Mr. Lygon*, and *Sir F. Goldsmid*.

*The Attorney-General* said, if any one could offer any practical suggestion for remedying this incidental evil, the

Government would be ready to consider it; but no one who looked at the matter carefully could doubt, that in the long run the evil would rectify itself, and ultimately benefit the classes displaced. To devise an immediate remedy was totally impracticable.

*Mr. Henley* spoke in favour of the motion.

*Lord Palmerston* objected, that the motion would be nugatory, as the committee would have no power to do what was desired.

*Mr. Hennessy* moved an amendment of the terms of the resolution that would obviate this objection.

*Lord Palmerston* still objected.

On a division, it appeared that there were not forty members present, so the House adjourned.

Wednesday, March 1.

LAW OF EVIDENCE, &amp;c. BILL.

*Sir F. Kelly*, in moving the second reading of this bill, said he did not intend to invite any discussion upon it, as it had been agreed that in committee it should receive full consideration. On the proposal to admit the evidence of the accused in criminal cases there was doubtless great difference of opinion. He asked the member for the county of Cork to postpone for the present the further progress of his measure, allowing the committee upon the present bill to stand over till the 23rd March, which would afford ample time for the consideration of the clause.

*Mr. Scully* consented to do so. It was rather anomalous, he observed, to find *Lord Derby's* Attorney-General in the foremost rank of law reformers, while the law officers of a liberal Government opposed his efforts. He gave the hon. and learned member opposite credit for being a sincere legal reformer; and he hoped the Attorney-General would likewise become as earnest in this respect as the noble and learned lord on the woolsack, for otherwise his official position would enable him to hinder useful changes. Among all men, and especially lawyers, there was a tendency to cling to familiar ideas, which, from constant daily habit, became stereotyped in their very nature. At one time he, too, held such stereotyped opinions, but when he became a legal reformer the first thing he did was to tear up by the roots all those legal notions imbibed in a long course of years.

*The Attorney-General* said the House desired to approach all subjects such as the present without anything like party spirit. It was, therefore, with regret he heard it suggested that law reforms should be made a matter of competition between one side of the House and the other. The practical tendency of any change that might be introduced, and whether the administration of justice would be improved or impeded thereby, were the grounds to which the House ought properly to direct its attention. He gave every credit to his honourable and learned friend for the sincerity of his desire to amend the law, and he was confident that on these and other occasions the true course was to do justice to each other's views and intentions. Without anticipating the discussion upon the bill, he might say, that if the measure were confined to the first two and the eighth clauses, there might be very little difference of opinion in relation to them; but as to every one of the others, he felt very considerable doubt. The third clause especially, enabling parties in criminal cases to become witnesses in their own behalf, of course subject to the usual right of cross-examination, seemed to him repugnant to the spirit of our whole legislation. If adopted, it would go far to introduce a system of moral torture like that prevailing in some parts of the continent; and he doubted very much whether innocent persons would be likely to gain so much as his honourable friend hoped, while the system might very possibly operate in favour of the guilty. It was his duty to state that the present views of the Government were opposed to the application; and of course the views of the Government on such a matter were the views of the noble and learned lord, his immediate superior, which were entitled to so much weight. It was very desirable, on a matter of such grave importance, that the opinions of all who were most conversant with the working of the laws in England and Ireland should be obtained; and if it should turn out that before the day mentioned by his honourable and learned friend, the Government were unable to obtain the necessary information from the judges and others whom it was their duty to consult, he felt sure his honourable and learned

friend would not oppose any reasonable proposition of adjournment. He also deemed it expedient that the discussion should take its place with the ordinary business of the House, when professional men were released from their engagements.

The bill was then read a second time, and was ordered to be committed on the 22nd inst., the *Attorney-General* having stated that he would endeavour before that time to make such arrangements as would lead to the discussion upon its clauses being taken when there was likely to be a full House.

The Felony and Misdemeanour Evidence and Practice Bill was read a third time and passed.

#### CHURCH ATTENDANCE ON THE SABBATH.

Mr. *Clifford* moved, that in committee of the whole House, the chairman be directed to move the House, that leave be given to bring in a bill for the abolition of fines for non-attendance at a place of Divine worship on Sunday.

The motion was agreed to. The House went into committee, and the resolution was passed.

### BILL IN PROGRESS.

#### *A Bill to confer on the County Courts a limited Jurisdiction in Equity.*

[Lord Westbury.]

Sect. 1. Every suit or matter that may now be commenced and prosecuted in the High Court of Chancery may hereafter be brought and prosecuted in the county courts held by virtue of the act of the 9 & 10 Vict. c. 95, and the judges thereof shall have full jurisdiction to hear and determine the same, subject nevertheless to the provisions and restrictions hereinafter mentioned; that is to say—

- (1). The sum of money or amount demanded or sought to be recovered by the plaintiff in any such suit shall not, exclusive of interest and costs, exceed the sum of 100*l.*, unless it be a distributive or other share of property sought to be divided or distributed:
- (2). The whole estate or property sought to be divided, distributed, dealt with, or administered in any such suit, or whereof it is sought to appoint a new trustee in any such matter, shall not exceed in value the sum of 500*l.*:
- (3). Where such suit seeks a declaration of right to any lands, tenements, or hereditaments, the annual value thereof, or, where the same shall not be let, the annual sum at which the same shall be assessed to the relief of the poor, shall not exceed the sum of 20*l.*:
- (4). Where such suit relates to the foreclosure, redemption, or sale of any property in mortgage, the amount of the principal of such mortgage shall not exceed 300*l.*:
- (5). Where the suit relates to the dissolution or winding-up of any partnership, the gross value or amount of the whole property, stock, and credits of such partnership shall not exceed the sum of 500*l.*:
- (6). If the suit relate to the specific performance, or to the delivery up or cancelling, of any agreement for the sale or purchase of any property, the whole amount or value of the property shall not exceed the sum of 300*l.*:
- (7). Injunctions, or orders in the nature of injunctions, if the same are requisite for granting relief in any such suits as aforesaid, may be made by the county courts, and they shall also have power to make orders for the restraint of waste upon lands or tenements the annual value whereof shall not exceed the sum of 20*l.*, and also for stay of proceedings at law where the plaintiff in such proceedings seeks the recovery of a debt provable under a decree for the administration of an estate made by the court to which the application for injunction is made:
- (8). No part of the jurisdiction in lunacy which is now exercised by the Lord Chancellor or the Lords Justices of the Court of Chancery shall be exercised by any county court:
- (9). The county courts shall have jurisdiction in all matters relating to the guardianship or custody of the

person of infants where the annual sum applicable to the maintenance of the infant shall not exceed the sum of 20*l.* per annum.

2. The county courts shall, in addition to the power and authority they now possess, have and exercise, for the purposes of this act, all the power and authority of the High Court of Chancery; and every county court judge, treasurer, registrar, and high bailiff shall discharge, and shall have authority to discharge, all the duties imposed upon him or them by this act, or by any rules and orders to be framed as hereinafter provided.

3. Whenever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the county courts by this act, it shall be summoned from the list of jurors in the possession of the registrar of the county court in which the suit or matter has been brought; and all the enactments relating to the summoning, impanelling, and swearing of a jury in a county court, and to the number of the jury and the unanimity of their verdict, shall apply to every jury summoned under this act; and the duties and obligations of and upon all jurors, suitors, and witnesses, and their liability to penalty and punishment, shall, in any proceeding under this act, be the same as those created, authorised, and imposed by the several statutes now in force relating to county courts.

4. For the due execution of any judgment, decree, or decretal order made under the authority of this act, or of the rules and orders to be framed as hereinafter provided, the court shall have power to order, and the registrar, upon such order, shall have authority to seal and issue, and the high bailiff to execute, any writ or warrant of possession, writ or warrant of execution, or other process of execution for carrying into effect any judgment, decree, or decretal order of the said court; and such writs, warrants, and processes shall be in the form, and executed at the time and in the manner, to be set forth in the rules and orders to be framed as hereinafter provided.

5. If during the progress of a suit or matter it shall be made to appear to the court that the subject-matter of the suit exceeds the limit in point of amount to which the jurisdiction of the county courts is hereby limited, it shall not affect the validity of any order or decree already made, but it shall be competent for the said court, if it shall think fit, to transfer the suit or matter to the Court of Chancery, and thereupon the suit or matter shall proceed in such one of the Vice-Chancellor's Courts as the Lord Chancellor may by general order direct; and such Vice-Chancellor shall have power to regulate the whole of the procedure in the suit or matter when so transferred: provided always, that if the county court shall deem it expedient that the suit or matter should not be so transferred, it shall be lawful for the plaintiff to apply to one of the Vice-Chancellors at chambers for an order authorising and directing the suit or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the county courts; and the Vice-Chancellor, after hearing the defendant or defendants, if he shall deem it right to summon them to appear before him for that purpose, or on default of the appearance of all or any of them, shall have full power to make such order.

6. With respect to the court in which proceedings in equity shall be taken:—

- (1). Proceedings under this act which relate to the recovery or sale of, or to the restraint of waste on, lands, tenements, and hereditaments shall be taken in that county court within the district of which the lands, tenements, or hereditaments, or the greater part thereof, are situate:
- (2). Proceedings under the *Trustee Acts*, 1850 and 1852, or relating to trustees or trusts, shall be taken in the county court within the district of which the trustees or the cestui que trust, or one of them, respectively, shall have their or his usual place of abode:
- (3). Proceedings for the administration of the assets of a deceased person shall be taken in the county court within the district of which the deceased person at the time of his decease had his usual place of abode:
- (4). Proceedings in partnership cases shall be taken in the

county court within the district of which the partnership business was or is carried on:

- (5). Proceedings for the foreclosure, sale, or redemption of property in mortgage shall be taken in the county court within the district of which either the mortgagee or mortgagor has his usual place of abode:
- (6). Proceedings for the specific performance of agreements shall be taken in the county court within the district of which either the person seeking to obtain the specific performance of the agreement, or the person against whom such specific performance is sought to be obtained, resides or carries on business.

7. If during the progress of a suit or matter it shall be made to appear to the court that the suit or matter could be more economically dealt with in some other county court, it shall be competent for the court to transfer the suit or matter to such other county court, and thereupon the suit or matter shall proceed in such other county court.

8. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under the jurisdiction in equity given to the courts by this act, by receiving for their own use such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders.

9. In addition to the fees to be authorised to be taken by order of the Commissioners of her Majesty's Treasury as aforesaid, there shall be paid by the suitors the several fees which are specified and set forth in the schedule to this act, or such further or other fees as the Lord Chancellor shall from time to time by order direct, which fees shall be received by the registrar of the court, and accounted for and paid over by him to the treasurer of the court, who shall, at such times as the said commissioners shall direct, pay such fees into the Bank of England, to the credit of the Paymaster-General, to be by him carried to an account to be called "The County Court Equitable Jurisdiction Fund Account;" and at the end of every year the said commissioners shall equally divide among the judges of the county courts the fees so received: provided that no judge shall in any one year participate in such fees to any further amount than shall be requisite to raise his existing salary to the sum of 1600*l.* a year; and the surplus of such fees, after each judge shall have been paid the amount necessary to make up his salary to 1600*l.* a year as aforesaid, shall be carried forward from year to year to provide for the payment of such additional salaries in future.

10. Such of the judgments and decrees as may be directed by any rule or order shall be registered with the registrar of county court judgments in London, in such manner as may be therein directed.

11. The county court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceeding therein, under the 32nd section of an act passed in the 19 & 20 Vict. c. 106, shall frame the rules and orders for regulating the practice of the county courts under this act, and forms of proceedings therein, and from time to time amend such rules, orders, and forms, and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall, from a day to be named by the Lord Chancellor, be in force in every county court.

12. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings whatever which under any statute may now be taken, or which are herein authorised to be taken, or which may hereafter be authorised to be taken in the county courts, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

13. If any party in a suit or matter in equity shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to one of the Vice-Chancellors, provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security, to be approved by the registrar of the county court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, decree, or order, if he be the defendant, and the appeal be dismissed; provided, nevertheless, that such security, so far as regards the amount of the judgment, decree, or order, shall not be required in any case where the judge of the county court shall have ordered the party appealing to pay the amount of such judgment, decree, or order into the hands of the registrar of the county court in which such suit shall have been tried, and the same shall have been paid accordingly, or where the judge shall think it right that an appeal be made without any such security; and the said court of appeal may make such final or other decree or order as it shall think fit, and may also make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorise any party to appeal against any decision of a county court, given upon any question as to the annual rent or rateable value, or as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this act, nor to appeal against the decision of a county court on the ground that the proceedings might or should have been taken in any other county court.

14. Such appeal shall be in the form of a case agreed on by all parties, or their attorneys; and if they cannot agree, the judge of the county court, upon being applied to by them or their attorneys, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the office of the Clerks of Records and Writs in Chancery.

15. The provisions of this act shall come into operation on the 1st October, 1865, except the provisions relating to framing a scale of costs, and making rules and orders of practice and forms of proceeding, which shall come into operation on the passing of this act.

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## THE JURIST.

LONDON, MARCH 11, 1865.

THE case of *Bills and Another, Assignees of Smith v. Smith* (11 Jur., N. S., part 1, p. 155), unsettles the notion which most persons entertained on the law of fraudulent preference. The facts were, that the bankrupt had in April, 1862, applied to his brother, the defendant, for a loan. The defendant was unable to lend the money himself, but procured it from his bankers, on the terms, that it should be repaid to them on the 1st July, 1862. The bankrupt was informed by his brother of the terms on which he had procured the money from the bankers, and the bankrupt, without any pressure from his brother, the defendant, repaid him the amount borrowed on the 1st July. The judge directed the jury, that if the bankrupt, though aware that bankruptcy was unavoidable, and though no application had been made for payment, paid the money simply in discharge of an obligation which he had entered into to pay on a given day, without any view of giving any particular creditor a preference at the expense of the rest, the payment would not be a fraudulent preference within the meaning of the bankrupt law. On a motion for a new trial, on the ground of misdirection, the Court upheld this direction of the learned judge. Now, we venture to say, that in all the previous cases in which the question of fraudulent preference has been discussed, it has been held, or taken for granted, that there must be pressure on the part of the creditor. In the case of *Strachan v. Barton* (25 L. J., Ex., 182), Martin, B., thus expresses himself:—"The question of fraudulent preference requires to be correctly stated, for it is one on which no doubt should be allowed to exist, and yet there is no point on which the law has undergone greater changes." Down to 1833, in consequence of the length to which the courts and juries went, the law was in a very unsound and unsatisfactory state, and there was scarcely an act done by a bankrupt which was not overhauled. The first case to put a stop to this state of things was *Morgan v. Bundrett* (5 B. & Ad. 289). About the same time that that case was decided came the case of *Cook v. Rogers* (7 Bing. 438). These two cases were the foundation of putting the law in a right position.

In *Morgan v. Bundrett*, where the bankrupt had deposited plate with a creditor as a security for his debt, the creditor had previously threatened him with an attachment for non-appearance in a Chancery suit, and had repeatedly and urgently pressed him for the money or security. The question for the jury was, whether he deposited the plate in consequence of this pressure; but in the judgments of the several judges it is assumed that pressure was a necessary ingredient. Thus, Littledale, J., says, "I think there was strong evidence to shew that the deposit was made in consequence of pressure." Parke, J., "I think there was much evidence that the deposit was in consequence of pressure." Patteson, J., "Upon the question of pressure, in order to shew that the deposit was made voluntarily, I think it ought to have appeared clearly that the bankrupt

took the first step towards making the deposit. Now, there was evidence that he had frequently been asked for payment or security." In *Cook v. Rogers* it is equally clear that a pressure by the creditor was assumed to be a necessary fact, the question there being, whether the bankrupt was influenced in making the payment by that pressure. Thus, Tindal, C. J., says, "I am not able to perceive any mode of ascertaining whether the payment and the delivery of the bill in this case were such as the law protects, or such as the law avoids, but by putting it to the jury to say whether the payments were made in contemplation of bankruptcy, and under fear of compulsion, or voluntarily." And Alderson, B., "It seems to me that the motives and intentions of the bankrupt may be material or immaterial; or, to speak accurately, may be more or less material, according to his situation, to the nature of the threat, and to the degree and period of urgency by the creditor."

In the case of *Van Casteel v. Booker* (18 L. J., Ex., 9), the question is fully discussed. There, the judge left it to the jury in such a way as to lead them to suppose, that in order to constitute a fraudulent preference, there must not only be a threat or pressure, but there must be the immediate power of making the pressure available by legal proceedings. The Court held that this last part of the summing up was a misdirection. The Chief Baron observes:—"Any kind of urgency; in short, any threat or act of any sort that prevents the bankrupt being purely a free agent will do." And Parke, B., adds—"Or less than that. If the jury believe that the request had not any effect on the bankrupt's mind, and that the bankrupt meant to give a fraudulent preference, the circumstance of there being a demand goes for nothing. But if the moving cause was the solicitation of the applicant, and not the desire of the bankrupt himself to prevent the distribution of his property, according to the cases that is no fraudulent preference, but that there need not be a present power on his part of proceeding against the bankrupt." In short, we believe in all the cases the pressure or solicitation on the part of the creditor will be found to be a necessary ingredient in the question, and that the doubt has been not whether such external pressure was necessary, but whether it did, in fact, operate on the mind of the bankrupt when he made the payment.

This, then, was the supposed rule of law up to the time of the case of *Bills v. Smith*, in which it will be remembered that there was no demand or pressure by the creditor. All that he did was to tell the bankrupt in April, when he gave him the money, that he himself had to repay it to the bankers in July; so that all that he told him was at what time the debt would be due; and it was, therefore, no reason, if the near relationship is to be excepted, for the bankrupt's paying this debt rather than any other which he also knew to be due at a given day. Suppose a man to have debts coming due on bills accepted by himself, or under any contract for payment of money at a given day, could it be contended that his payment of one or some of them, in contemplation of bankruptcy, would not be a fraudulent preference? The fact that



he knew it to be due could be no answer, as he must be taken to know the same of all his debts. The near relationship only aggravates the suspicious nature of the payment. The Court repudiates the notion of a demand by the creditor being necessary. "The effect of pressure in legalising payment is only that it rebuts the presumption of an intention on the part of the debtor to act in fraud of the law, from which fraudulent intention alone arises the invalidity of the transaction; but if the fact of pressure by the creditor only operates in the way pointed out, why may not any other circumstances which in like manner would serve to repel the presumption of fraudulent intention be available for this purpose?" Now, if there is not pressure by the creditor, it is difficult to conceive what other circumstances there can be which would influence the debtor. Not affection or friendship for the creditor—for his acting on such feelings would constitute at once a fraudulent preference. If he was a very silly or ignorant person, and thought that the non-payment of the particular debt would subject him to some severe punishment, it must be assumed, from the judgment in *Bills v. Smith*, that the payment under such a belief would be protected. But such a latitude of investigation opens the door to a variety of questions, on which the verdict of a jury must always be uncertain. They will have to consider, and principally upon the unsatisfactory evidence of the bankrupt himself, what were the motives and mental conditions which induced him to make the payment. If pressure of the creditor were a necessary element in the question, it would be comparatively easy for the jury to form an opinion on the effect of the pressure on his mind, but it is no easy thing to say how far a man's belief or impressions—no external cause being brought to bear upon him—influenced his conduct. The Court observes, "that there is authority for holding that where money is paid under a special contract for repayment made when the money was lent, this act would not amount to a fraudulent preference; and cites as this authority the case of *Hunt v. Mortimer* (10 B. & Cr. 44); but we must venture to think that the true ground of the judgment in that case is that assigned by Patteson, J., viz. that there had been an equitable assignment by the bankrupts at the time they borrowed the money of the fund, the payment of which to the lender was insisted upon as a fraudulent preference. The money was not lent by the defendant to the bankrupts on their general credit, but on the faith of the moneys which were to be received from the East India Company; and the arrangement between the bankrupts and the defendant had the effect of an equitable assignment of the particular fund to which the plaintiffs, who, as assignees, are entitled only to such effects as the bankrupts had, both legally and equitably, have no claim."

This appears to be the real ground of the judgment in *Hunt v. Mortimer*, and if it is, the case is not an authority for the judgment in *Bills v. Smith*, in which case no particular sum was ever assigned by the bankrupt to pay the money which his brother had borrowed for him.

Upon the whole, we think that the decision in

*Bills v. Smith* is a considerable deviation from what has hitherto been supposed to be the law of fraudulent preference, and it has certainly created much surprise in the profession. It was generally thought that upon the previous authorities, pressure by the creditor must be proved. If *Bills v. Smith* is to be an authority for the future, there is no occasion for such proof, and in all cases where there is no demand or pressure by the creditor, juries will have to determine what were the motives influencing the bankrupt, without the assistance which proof of external causes of a nature likely to act upon his mind would afford them.

## Correspondence.

### SEPARATE ESTATE IN FEE.

TO THE EDITOR OF "THE JURIST."

SIR,—I have perused an article from a correspondent in your last number, relative to a wife's power of disposition over her separate estate of inheritance, in which remarks are made on an article in the *Solicitors' Journal*, vol. 7, p. 640, on the same question. It is in your correspondent's communication admitted that the writer of that article would have proved his point, if he could have shewn, that at the common law the whole inheritance of a wife's estate was during the coverture vested in the husband; and that a conveyance by the husband was a conveyance of the inheritance. And your correspondent remarks, that the husband's fine or feoffment in such case owed its entire effect, "not to its conveying a legal estate, but to its creating a new estate" by wrong. Now, to this, I need merely answer, that if the inheritance were not in the husband, he could not *discontinue* the estate, though he might create a disseisin. The wife, however, was at the common law put to her action, and had no right of entry, which she would have had, if the fine or feoffment had been a mere disseisin, or a forfeiture, as it must have been if the husband's legal estate had been a mere freehold estate for the coverture, i. e. for the joint lives of the husband and wife; in fact, I have but to refer to Littleton's definition of a discontinuance, and Coke's commentary on it, and to the second instance of discontinuance given by Littleton (see Co. Litt., sects. 592, 594), in order to establish my position. And I take leave to remind your correspondent, that discontinuance, which tolled an entry, was different from mere disseisin, which did not, and that to create a discontinuance the *inheritance* must have been in the discontinor, and not the freehold only.

I remain, Sir,

THE WRITER OF THE ARTICLE  
(7 Sol. Journ. 640) REMARKED ON.

56, Chancery-lane, March 7.

[Our correspondent has given a sound technical answer to a technical argument. But surely the blazonry of tenure can have no bearing on the construction or effect of a trust, which is intended to set aside the ordinary rules of property. The decision in *Lechmere v. Brotheridge*, which was overruled in *Taylor v. Meads*, was rested on two considerations—first, that it is against the policy of the law to allow a settlor, by a mere declaration of intention, to dispense with the machinery of the Fines and Recoveries Act; and, secondly, that the sole intention of the trust for

separate use is to exclude marital control. It seems to us, that the decision is left without any support, when it is shewn, by reference to numerous authorities, which we need not cite again—First, that a mere declaration of intention is a sufficient dispensation with the machinery of the act, whether it be in the common form of a power of appointment, or in the very words which the Master of the Rolls uses to express the supposed illegal intention—"I declare that my intention is, that she may dispose of the same without acknowledgment under stat. 3 & 4 Will 4, c. 74." (32 Beav. 364; see pp. 360, 361, where the same judge, in the same case, and in the same judgment, expressly decided, that such a declaration of intention was sufficient):—And, secondly, that, so far from the protection of the wife from marital control being the main object and effect of the trust for separate use, as interpreted and enforced in equity, a further and distinct expression of intention, that the wife shall not have power to alienate her separate property, is necessary for that purpose, without which the trust simply operates to remove the disabilities of coverture, incidentally excluding the marital title, but doing much more than that, by investing the wife with all the powers of disposition which she would have if she were unmarried; and that in respect even of reversionary interests in personalty, which, so far from needing protection from marital control, could not, without the aid of the trust for separate use, be dealt with either by the husband or by the wife, nor by both together.—ED.]

## ASSOCIATION OF CHAMBERS OF COMMERCE OF THE UNITED KINGDOM.

THE annual meeting of the delegates from the various provincial Chambers of Commerce constituting this association commenced on Tuesday, the 21st February, at the Westminster Palace Hotel; Mr. Sampson S. Lloyd, the chairman of the association, presiding.

### BANKRUPTCY LAW REFORM.

The Chairman moved the following resolutions:—

"That the experience of the commercial community and the evidence taken before the select committee of the House of Commons last session, combine to shew that a thorough reform of the English law of bankruptcy, and of the system of procedure under it, is urgently needed. That in such reform the following are important desiderata:—

"I. Provisions for the safe, economical, and speedy realisation and distribution of the estate. That in the opinion of this meeting, the provisions of the Scottish Law of Bankruptcy (19 & 20 Vict. c. 79), accomplish these objects very satisfactorily, and this meeting approves their adoption in England.

"II. Provisions for the adequate and certain punishment for insolvency arising from the wilful and reckless incurring of debt, to an extent beyond that which the bankrupt had reasonable expectation of discharging, as well as for actually fraudulent bankruptcy. That in reference to this point it is desirable that the acts constituting reckless insolvency and fraudulent bankruptcy should be clearly defined (irrespective of the condition of 'intent' to defraud); and that the definitions of the French Code de Commerce,

arts. 585, 586, 591, 593, appear in the main to do this satisfactorily.

"III. The appointment of a chief judge to secure uniformity of decisions, and greater facilities and economy in cases of appeal.

"IV. The administration in the Court of Bankruptcy of the estates of deceased insolvents.

"V. The abolition of the limitation under the 221st section of the act of 1861, by which an offender is only punishable for a misdemeanour if committed within three months prior to bankruptcy.

"VI. The assimilation (as far as practicable) of the statute law of England, Scotland, and Ireland on this subject.

"VII. The provision of means for the recovery of British bankruptcy assets situate in any part of the British empire, and the endeavour (by negotiation or otherwise) to obtain means for the recovery of British bankruptcy assets situate in foreign countries.

"VIII. The abolition of the rule by which secured creditors are permitted to vote for deeds of composition in respect to such part of their claims as is secured.

"IX. The consolidation of the entire statute law on this subject into one act."

Which, after discussion, was put and carried unanimously.

A committee was then appointed to wait upon the Lord Chancellor, and to impress upon him the importance of assimilating the English law of bankruptcy to the law of Scotland.

### PARTNERSHIP LAW AMENDMENT.

Mr. Dixon (Birmingham) moved the following resolution:—

"That the meeting is of opinion that it would be advisable to alter the partnership laws, so far as to declare that receiving a share of profits, instead of, or in addition to, a fixed rate of interest, for money lent to a private trading concern, shall not make the lender a partner."

He said the resolution simply declared that it was inexpedient that the law should allow a lender to obtain a fixed rate of interest on a loan without becoming a partner, and yet that he should not be allowed to obtain a variable rate of interest. That was the whole of the difference which he proposed to effect by a change in the law.

Mr. Lupton moved, by way of amendment, that the words, "In the case of money lent, would be liable for the debts of the firm for twelve months after its withdrawal, and the loan must be registered."

The amendment was carried, twenty being for and two against it, six remaining neutral.

The original motion, as amended, was then carried without a division.

Mr. Dixon then moved,—

"That this meeting is of opinion that it would be advisable to alter the partnership laws, so far as to declare that giving a clerk or manager a share of the profits in addition to, or in lieu of, a salary, shall not constitute such clerk or manager a partner."

After a short discussion the resolution was agreed to, the numbers being eighteen for and eight against it.

## PETITIONS OF THE BAR IN FAVOUR OF THE CONSTRUCTION OF COURTS OF JUSTICE BILLS.

THE petition to the House of Commons was presented by the Attorney-General on the 23rd February; it was signed in one week by 681 members of the Bar, of whom 306 are members of Lincoln's Inn, 215 of

the Inner Temple, 140 of the Middle Temple, 17 of Gray's Inn, and 3 of Serjeant's Inn. Of these twenty-six are Queen's Counsel, and are distributed among the Inns of Court as follows:—Lincoln's Inn, eleven; Inner Temple, six; Middle Temple, five; and Gray's Inn, four.

The signatures include most of the leading juniors of both the common law and equity Bars; indeed, it is believed that almost the entire equity Bar have signed.

Had time permitted, the petition would doubtless have been much more numerous signed by members of the common-law Bar, as the numbers of those who have, for various reasons, declined to sign may safely be estimated at not more than five per cent. of those personally applied to.

The petition to the House of Lords still lies for signature in the libraries of the Inner and Middle Temples and of Lincoln's Inn.

#### LIST OF SHERIFFS AND UNDERSHERIFFS, WITH THEIR DEPUTIES AND AGENTS, FOR 1865.

\* \* Warrants are granted in town for all places except Bristol, Canterbury, Chester, Derbyshire, Devonshire, Durham, Exeter, Gloucestershire, Gloucester City, Herefordshire, Haverfordwest, Kingston-upon-Hull, Lancashire, Lichfield City, Monmouthshire, Norwich, Poole, York City, and the remainder of the Welsh counties. Office hours—in Term, from 11 till 4, and in Vacation, from 1 till 3.

**Bedfordshire**—Lionel Ames, Esq., The Hyde, Saint Albans.

*Undersh.*, Charles Addington Austin, Esq., Luton.

*Deps.*, Taylor, Mason, & Taylor, 15, Furnival's-inn, E. C.

**Berkshire**—Benjamin Buck Greene, Esq., Midgham House.

*Undersh.*, J. J. Blandy, Esq., Reading.

*Deps.*, Gregory, Rowcliffe, & Rowcliffe, 1, Bedford-row, W. C.

**Berwick-upon-Tweed**—H. Richardson, Esq., Castle-terrace, Berwick-upon-Tweed.

*Undersh.*, J. C. Weddell, Esq., The Avenue, Berwick.

*Deps.*, Shum & Crossman, 3, King's-road, Bedford-row, W. C.

**Bristol**—H. C. W. Miles, Esq., Kingsweston, near Bristol.

*Undersh.*, James Davison Wadham, Esq., Bristol.

*Deps.*, Bridges & Co., 23, Red Lion-square, W. C.

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*Undersh.*, Acton Tindal, Esq., Aylesbury.

*Dep.*, John M'Millin, 39, Bloomsbury-square, W. C.

**Camb. & Hunt.**—John Hall, Esq., Ely.

*Undersh.*, Goodwyn Archer, Esq., Ely.

*Deps.*, Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

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*Undersh.*, A. Fielding, Esq., Bridge-street, Canterbury.

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*Undersh.*, John Hostage, Esq., Chester.

*Deps.*, Chester & Urquhart, 11, Staple-inn, W. C.

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*Undersh.*, John Coode, Esq., Saint Austell.

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 { Roberts, Kelly, & Keene, Mold. A. U.  
*Deps.*, Roberts & Simpson, 62, Moorgate-st., E. C.

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*Undersh.*, { Henry Davies, Esq., Oswestry.  
 { Howell & Jones, Welshpool. A. U.  
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*Undersh.*, Richard David Jenkins, Esq., Cardigan.  
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### Imperial Parliament.

#### HOUSE OF LORDS.—Friday, March 3.

##### COUNTY COURTS EQUITABLE JURISDICTION BILL.

The Lord Chancellor having moved the second reading of this bill,

Lord St. Leonards said, that when on a former occasion, a somewhat similar bill was brought in to give the courts of common law an equitable jurisdiction, he had taken the liberty of pointing out to their Lordships several serious objections to it, and not the least among them was, that the judges to whom it was proposed to extend the jurisdiction were not the class of lawyers to deal with that kind of law. This he said without any impeachment of their learning, as the two branches of the law were totally distinct. The second ground on which he had objected to that bill was, that the common-law courts had not the machinery necessary for work satisfactorily an equitable jurisdiction; and, thirdly, that they had not the time to perform such extra duties. A committee consisting of most of the principal members of the Legislature was appointed to consider the bill, and the result was that clause after clause was struck out, and eventually the noble Lord who introduced the bill allowed it to drop, and nothing more was heard of the subject until the noble Lord upon the woolsack introduced his bill last year, of which the present was a portion. The first objection he made to the original bill applied with ten times the force to the present bill, because their Lordships must be well aware that the county court judges must be incompetent as lawyers to deal with questions in equity. They had studied the law as common-law lawyers, and were very well adapted for the positions they held, but they had never in their lives ventured to give an opinion upon a case involving equity law, which they did not assume or pretend to understand. The bill sought to force a jurisdiction upon a class of judges who did not desire it, and would, if asked for their opinion, pray to be delivered from it. Those judges were not to blame for wishing to avoid the novel jurisdiction, as when they accepted their office there were no duties attached to it that they were not capable of discharging. How could they cast upon the county court judges new duties which they were unequal to perform, and which they had never undertaken? They were about to put their unholy hands upon 1,000,000*l.* belonging to the Suitors' Fee Fund, and 500,000*l.* from a reserve fund, not one single shilling of which they ought to touch, in order to build a palace of justice, into which the rich man would walk, and demand at the hands of competent judges, assisted by a competent bar, a just decision upon his rights. But this bill proposed that the poor man, with his little all of 300*l.* or 500*l.*, should not approach this palace of justice, in all its grandeur, but must go to the county court, and have his rights decided by a person who professed himself to be totally ignorant of that branch of the law.

There would be then truly one law for the rich and another for the poor. With regard to the machinery necessary for properly carrying out equity law, let their Lordships compare that of the county courts with that of the Court of Chancery, and they would at once see the impossibility of reducing to practice the theory of this bill. By the improvements which had been and would be made in the practice of the Chancery Courts, the costs of proceedings therein would be greatly reduced, so that the objection that they were too expensive for the poor man would be removed. If the bill were based upon sympathy for the poor man, it shewed itself in saving his pocket by giving him bad law, which nobody would wish to have at any price. It must not be forgotten, that in the county court there were no equity barristers, and the attorneys who practised there would be incompetent to assist the judge upon any doubtful point. As to the bill now under discussion, a great objection to giving jurisdiction in equity in county courts was, that the judges in these courts were itinerant. They went circuit, and might be forty or fifty miles off when an application was made to their court. A court of equity ought to be fixed; otherwise it could not answer the purpose for which it was intended. A resolution had been sent to him from the Standing Committee of the Jurisprudence Department of the Social Science Association, in which it was declared that the existing machinery of the county courts was not adequate to the exercise of a jurisdiction in equity. He concurred in that view; a suit for 100*l.* might involve some very nice questions, and though the annual value of the property might not exceed 20*l.*, the personal interest which the landlord had in it might be worth many thousands of pounds. Again: there were no more delicate questions than those which had to be decided in a court of equity in suits for specific performance and suits for the cancelling of agreements, and these questions arose irrespectively of the amount involved. The more the bill was examined, the more evident it became that such a measure would not work; if the limits were passed by even the smallest amount the parties might be driven to the Court of Chancery after all. In cases of mortgage, it was to be remembered that the mortgagee and the mortgagor did not usually reside in the same place, and that a man might reside at one end of the kingdom and have his money lent at the other. A mortgagee, for instance, living in the north of England, might step into a county court fifty yards from his door, and take proceedings against his mortgagor who lived in the south. The same was the case with regard to suits for specific performance. He objected strongly to the manner in which the fees were to be levied. The Government were about to take a million from the funds of the Court of Chancery, which he maintained was the property of the suitors, and which ought to be applied to the reduction of the fees, so that even the poorest might be able to avail themselves of the remedies provided by the Court of Chancery. He was strongly opposed to the bill, but on the whole he did not think it advisable to divide the House against it on the present stage.

Lord Cranworth concurred entirely with his noble and learned friend in thinking that there were many provisions in this bill which ought not to be allowed to stand, but upon the whole, a bill to give county courts equitable jurisdiction in cases of small amount, would be exceedingly useful. The creation of county courts was, in the first instance, a tentative measure, but it had succeeded admirably, and from time to time their jurisdiction had been enlarged, to the great benefit of the country. The time had come when this equitable jurisdiction might be conferred upon them. Surely courts which were intrusted with the duty of ascertaining whether debts were due were competent to wind up these small estates, to ascertain who were the creditors, and to divide the assets. By the law as it at present stood, county courts had a jurisdiction as to legacies up to 50*l.*, but they had no jurisdiction where people died intestate, leaving a small property. He agreed with his noble and learned friend's objection to the manner in which the judges were to be paid for the extra labour imposed on them.

Lord Chelmsford said, that it would undoubtedly be a desirable thing, if equitable remedies could be brought within the reach of persons who could not afford the expensive luxury of a Chancery suit. To prevent the county courts, however, obtaining too large a jurisdiction, would require very careful framing of the details of the bill; and he wished to call his noble and learned friend's attention to the wording of

the first clause, which he thought might have rather a dangerous effect. The first clause ran thus:—"Every suit or matter that may now be commenced and prosecuted in the High Court of Chancery, may hereafter be brought and prosecuted in the county courts, and the judges shall have full jurisdiction to hear and determine the same, &c., subject to the provisions and restrictions hereinafter named." But unless those restrictions were very carefully framed, the county courts would get a jurisdiction to any amount; and he would suggest, that it would be better if the clause ran—"The judges of the county courts shall have power to hear and determine every suit which may now be commenced in the High Court of Chancery in the following cases." He could not help fearing, that if this additional business was thrown upon the county courts, they would be found scarcely able to bear the increased burthen. He had been informed by one of the metropolitan county court judges, that he had had an average of 140 cases every day on which he sat, and that he was frequently occupied until seven or eight in the evening in disposing of them. The only other point to which he would advert upon the present occasion, was the very objectionable mode in which it was proposed to remunerate the judges for the additional labour to be cast upon them. He was inclined to believe, that the plan proposed by the bill did not have the entire concurrence of the noble and learned Lord on the woolsack, but that he had adopted it under the belief, that a proposition for an increase of salary to the judges would meet with opposition elsewhere. The county court judges had not been treated either fairly or liberally by the country. By the provision in the bill, no judge was to receive a greater amount of fees than would raise his whole remuneration to 1800*l.* a year. The effect of that would be, that in populous places, where the greatest proportion of new business might be expected to arise, and where the judges now received 1500*l.*, the only additional remuneration they would receive for the new labour would be 100*l.* a year, while, in districts where there was less business, the judge might get an increase of 400*l.* a year. His own opinion was, that all the judges should receive 1800*l.*, and some of them were well entitled to 1800*l.*

*Lord Chancellor.*—As to the remuneration of the judges, the noble and learned Lord has rightly divined that the mode I have adopted in the bill is one dictated by necessity, and not by choice. I am perfectly well aware of the objections to this plan. It is one I would not have resorted to if I had found myself able to carry another mode of remuneration. The sum voted in the last year for the county courts generally was 152,000*l.*, and the salaries of the judges, paid out of the Consolidated Fund, amounted to 82,000*l.*; so that the total expense was 234,000*l.* I am by no means disposed to say that is too large an amount; but, at the same time, it is so large a sum that I was very unwilling to peril this measure by proposing that any considerable addition should be made to the salaries of the judges. I was afraid that would involve the discomfiture of the bill, or, at least, that the proposition would not meet with the assent of the House of Commons, so that the judges would be left without additional remuneration for new labours to be imposed upon them. I concur in much that has been said as to the merits of these functionaries, and the inadequate manner in which they are paid. I protested against the reduction of their salaries. I desire to elevate their salaries to an amount of 1800*l.* a year. It was in order to avoid the danger of the bill being utterly defeated that I have now proposed this mode of remuneration, not as the best mode, but as the only one which I think there is any chance of getting the House of Commons to assent to. As to the measure itself, I can only say I am not surprised at the opposition of the noble and learned Lord near me (Lord St. Leonards). I know the great advantage of having his determined opposition, because we are certain to have the benefit of the close scrutiny of all the provisions of the measure. At the same time I hope that his opposition is with a view to amend, and not to destroy, the bill. My noble and learned friend has referred to these judges as being utterly incompetent to administer business in equity. I am sorry to hear that opinion fall from my noble and learned friend, because he has practised in the equity courts, and was present when Lord Lyndhurst was suddenly transferred from the court of common law to the court of equity, which he afterwards adorned for so many years. I never heard that any charge of incapacity

was brought against him, and the same thing may be said of a great number of other judges who were transferred without any warning in the same way; and when my noble and learned friend says, I had better abstain from putting sacrilegious hands upon the fund which ought to be applied to the reduction of the fees of the court, he forgets the effect which has attended the reductions already made. From extracts which I hold in my hand, I find that there was a suit instituted in the Court of Chancery to get a decree for some property not exceeding in value 160*l.* The costs amounted to 95*l.* 13*s.*; but the court fees, the reduction of which is the panacea of my noble and learned friend, were only 5*l.* 7*s.* 6*d.* The next case is something still worse. That was a small suit instituted for the administration of an estate. The whole estate was 400*l.*, and the debts on it 100*l.* The costs amounted to 130*l.* 8*s.* 8*d.*, the court fees being only 9*l.* 12*s.* These expenses arise from the fact, that the suit originates in the country, and the business has to be conducted between country and London solicitors, involving great loss of time and increase of expense. If witnesses be required, these witnesses would also properly have to come to London. The great fault of lawyers is, that they become so enamoured of the old system in which they have been bred, and in its principles, that they refuse to see anything but good in its application, and they look with suspicion on any plan which is likely to make the form of judicial procedure less elaborate and less costly as likely to cause a departure from that exactness in which they believe justice to reside.

The bill was then read a second time.

*Tuesday, March 7.*

The Bankruptcy and Insolvency (Ireland) Act Amendment Bill was read a second time.

HOUSE OF COMMONS.—*Thursday, March 2.*

The Courts of Justice Building Bill was read a third time, and passed.

*Monday, March 6.*

On the motion of Mr. M. Gibson, a resolution was agreed to, in committee of the whole House, upon which a bill proposed to be introduced for the amendment of the law of partnership should be founded.

*Wednesday, March 8.*

The Prisons Bill was read a second time, and referred to a select committee.

REGISTRATION OF COUNTY VOTERS.

Mr. Hunt moved for leave to bring in a bill to amend the law relating to the registration of county voters. The object was to remedy a practical grievance. At present, any person on the list of voters for a county or division might send a notice of objection to any other person on the list, assigning no reason for his objection; and the practice was to place some man of straw on the register, who signed any number of objections, which were distributed all over the county, without giving the persons objected to the slightest clue to the ground of objection. In South Lancashire, for instance, in 1862-3, out of 23,140 names on the register, 16,468 were objected to, and 5554 were expunged. In 1863-4, out of 22,390 names on the register, 13,468 were objected to. That statement was quite sufficient to shew that some change was requisite. The bill required that notices of objection should state specifically the grounds of objection; each should be considered separately, and if any objection taken was pronounced frivolous or vexatious, the revising barrister should have power to give costs on that, even if the objector were successful on any other ground. He also proposed that voters should be able to send declarations, made before a magistrate or a Master in Chancery, stating what their qualification was, instead of being compelled to appear in person before the revising barrister.

After a few words from Mr. Hibbert, Mr. Dodson, and Mr. Collins, who approved the objects of the measure, leave was given to bring in the bill, which was afterwards introduced and read a first time.

Mr. Longfield obtained leave to bring in a bill to provide for the security of the property of married women separated from their husbands in Ireland.

## BILLS IN PROGRESS.

*A Bill to amend the Law relating to Attorneys and Solicitors.*

[Lord Westbury.]

Sect. 1. A contract between an attorney or solicitor and his client respecting his remuneration for any professional services, either past or future, whether the contract be for payment of a gross sum or for payment of any sum or sums to be ascertained according to any principle, rate, or mode differing from the rules which would otherwise regulate the amount of such remuneration, and whether the remuneration contracted for be greater or less than that to which such attorney or solicitor would otherwise be entitled, shall be valid; provided that the validity, construction, and effect of such contract may be determined in any proceeding by motion, petition, or rule in the matter of the attorney or solicitor without suit.

2. That the officer to whom it shall be referred to tax a bill of fees, charges, and disbursements of any attorney or solicitor which has been delivered, sent to, or left with the client in manner required by the 6 & 7 Vict. c. 73, shall have the like power to award interest thereon from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment, as by the 23rd section of the 3 & 4 Will. 4, are given to juries with respect to the debts or sums there mentioned.

3. An attorney or solicitor being trustee or executor shall be entitled, either alone or jointly with his partner or partners (if any), to the payment of professional fees and charges for professional business done by him or his firm in connexion with the duties or powers of the trusteeship or executorship.

4. An attorney or solicitor may take security from his client for his future fees, charges, and disbursements.

5. Interpretation of words.

*Abstract of a Bill for the further Amendment of the Law of Evidence, and the Practice in certain Courts of Justice.*

[Sir F. Kelly, Mr. Macaulay, and Mr. M'Mahon.]

Sect. 1. Parties to action for breach of promise of marriage to be admissible as witnesses.

2. Parties to any suit instituted in consequence of adultery may offer themselves as witnesses on their own behalf.

3. Any person on trial for treason, felony, or misdemeanour, may offer himself as a witness on his own behalf.

4. Any person charged with offence punishable on summary conviction, may offer himself as a witness on his own behalf.

5. Such persons to be sworn, and subject to cross-examination.

6. On trial for felony or misdemeanour, counsel for prosecution, and prisoner or his counsel, to be allowed to sum up in certain cases.

7. Special juries allowed for the trial of indictments in certain cases.

8. Any court of justice may refer questions of legitimacy, or of right to be considered British subjects, to a jury.

*Abstract of a Bill to amend the Law of Libel, and for more effectually securing the Liberty of the Press.*

[Sir C. O'Loughlin, Mr. Longfield, and Mr. Hennessy.]

Sect. 1. Without the sanction of the law officer of the Crown, no private prosecutor shall be at liberty to prefer an indictment for any libel, other than a libel published with intent to extort.

2. The defendant on a trial of an indictment or information for libel may offer himself as a witness, and so may the defendant's wife or husband.

3. No proprietor of a newspaper or periodical publication shall be liable to an action for a faithful report of a speech at a public meeting, unless he shall decline to publish a fair reply to the speech complained of.

4. To an action for a published libel it shall be a defence that

the defendant believed the libel to be true, and that he published the same for a lawful object, or as a fair comment, unless the libel has caused, or is likely to cause, actual damage to the plaintiff.

5. In all actions for libel the defendant shall be at liberty to pay money into court.

6. In cases where the damages are under 20s., the defendant shall get his costs, and to carry costs for the plaintiff the damages must be over 40s.

7. A speaker at a public meeting may be proceeded against civilly or criminally for defamatory matter spoken by him at such meeting.

8. The privileges of Parliament or other public bodies not to be affected.

9. The truth of a libel may be pleaded in a short form.

10. Act not to extend to Scotland.

*Abstract of Juries in Criminal Cases Bill.*

[Sir C. O'Loughlin and Mr. Longfield.]

Sect. 1. In a criminal trial a jury shall not separate without leave, but such separation shall not invalidate verdict.

2. If a jury separates without leave, judge may swear a new jury, or continue the trial with the original jury, and may fine the jurors.

3. When a trial lasts more than a day, the judge may either keep together the jury or allow them to separate, and if kept together he may keep them at an hotel or in the court house, and he may send a county jury to an hotel in a city adjoining.

4. Before a jury shall retire to consider their verdict, a judge may, in certain cases, discharge a jury.

5. In certain cases he must certify the cause of discharge to the Chancellor.

6. If a judge becomes unable to continue a trial, the jury shall be discharged.

7. A jury may be ordered refreshment after they have retired to consider their verdict.

8. After a jury has retired they may be discharged in case of necessity.

9. If a jury cannot agree the judge may discharge them.

10. The judge's decision on the discharge of a jury shall be final.

11. After jury discharged, the party accused may be tried again.

12. Construction of words.

13. Act not to extend to Scotland.

*A Bill to facilitate the Discharge of Insolvent Debtors in certain Cases.*

[Mr. Paull, Mr. Locke, and Mr. M'Mahon.]

Sect. 1. This act shall commence and take effect from and after the 1st September next after the passing hereof: it shall extend and apply to, and the powers hereby conferred shall be exercised by, the presiding judge of every court having power to commit any person to prison upon or by reason of any order or judgment, wherever there shall have been recovered a sum for debt not exceeding 20l., exclusive of costs; and the Lord Chancellor shall have power to direct from time to time, by General Orders, the forms to be used, and the fees to be taken, upon or in respect of proceedings under this act, and the application of such fees.

2. Whenever upon the examination of any person summoned to appear before the judge of any court having the powers of commitment in the last section mentioned, and be examined touching his estate and effects, and means of paying any judgment debt, it shall appear to the judge that such person has not then, nor within a reasonable time is likely to have, any money or property of any kind, and that, taking into consideration his means of earning any money, there is no well-founded expectation of his being able, after providing for the support of his family, to pay and discharge his debts within a reasonable time out of such earnings, the judge may proceed to examine such person touching all his debts, dealings, and transactions; and if he shall be satisfied with such examination shall, if he think fit, make a preliminary order to the effect that upon a day to be therein named, and within two calendar months from the day of the date thereof, he will proceed to make in favour of the person named therein (such person hereinafter called the insolvent) a final order of dis-



charge from the debts and liabilities then due and owing by him, of which he shall disclose the amounts and names of the creditors respectively in the meantime, unless good cause shall be shewn to the contrary.

3. A notice of such preliminary order having been made shall be put up in some conspicuous place, open to the public, in the court house or office of the registrar or clerk of the court, and shall be entered by the registrar or other officer of the court in a book to be kept for that purpose, which shall be open to the inspection of any person professing to be a creditor, or the agent of a creditor, of the insolvent; and the registrar or other officer of the court shall also, at the request of the insolvent, at any time within one month of the date thereof, but not later, unless by leave of the judge, transmit a similar notice by post, to every creditor of the insolvent with whose name and address he shall be supplied.

4. On the day appointed in that behalf, the judge shall proceed to make the final order of discharge, unless good cause be shewn to the contrary; and to such order, if made, the registrar or other officer of the court shall append the name and address of each creditor to whom a copy of the preliminary order shall have been transmitted, unless such creditor, having previously given to the registrar or such other officer, and to the insolvent, at least ten days' notice in writing of his intention so to do, stating in such notice the grounds on which he relies, shall shew cause to the contrary, and the judge shall be of opinion, that, as regards such creditor, the order of discharge should not take effect; but the judge shall have power to refuse the order of discharge altogether, or to adjourn the further examination of the insolvent from time to time, and at any time to rescind the preliminary order or the order of discharge, in whole or in part, upon being satisfied that such order ought not to have been made.

5. The preliminary order shall have the same effect as an order of protection made under the statutes relating to bankruptcy, and the final order of discharge the same effect as the unconditional order of discharge of a bankrupt under such last-mentioned statutes, as to all the debts and liabilities of the insolvent due and owing at the date of the preliminary order to the creditor who issued the judgment summons, and to those creditors whose names are appended to the order of discharge; and any gift, contract, promise, or agreement to or with the creditor, or any one on his behalf, for the withholding or withdrawing of opposition to the making of the final order, shall be void and of no effect.

6. Act not to apply to persons who obtained credit under false pretences, &c.

7. Title of act.

## BOOKS RECEIVED.

A Treatise on the West Indian Incumbered Estates Acts. With an Appendix, containing the acts, general rules, forms, and directions, additional forms, local acts, tables of fees, solicitors' fees and charges, and reports of cases (heard before Henry James Stonor, Esq., Chief Commissioner). By Reginald John Cust, Esq., of Lincoln's Inn, Barrister at Law, Secretary to the West India Incumbered Estates Commission. Second edition. 12mo. Pp. 554.—Amer.

The Law and Practice of the Court of Probate, Contentions and Common Form; with the rules, statutes, and forms. By Phillip William Dodd, Solicitor, and George Henry Brooke, Proctor, Doctors' Commons. 8vo. Pp. 1310.—Stevens, Sons, & Haynes.

A Treatise on Costs in Chancery. By George Osborn Morgan, M.A., Barrister at Law, and Horace Davey, M.A., Barrister at Law. With an Appendix, containing Forms and Precedents of Bills of Costs. 8vo. Pp. 615.—Stevens, Sons, & Haynes.

Clerical Disabilities. A short account of the law upon the subject, and some remarks thereon. By W. T. Marriott, Esq., of Lincoln's Inn, Barrister at Law. 8vo. Pp. 31.—Longmans.

**SUITORS' FEE FUND.**—The account of the Suitors' Fund for the year ending October, 1864, just laid before Parliament, shews that, owing to the Chancery pensions charged upon the fund having diminished in the course of the year, the payments from the fund were less by 3423*l.* than in the previous year. The sum of 63,768*l.* was carried over as surplus interest to the Suitors' Fee Fund account, leaving a balance of 21,004*l.* cash. The Suitors' Fee Fund account shews receipts in the year, including the above 63,768*l.*, amounting to 175,890*l.*, a larger receipt than in the previous year by 13,846*l.* The increase arose partly from a larger surplus brought over from the Suitors' Fund, partly from a large sum paid in for brokerage, and partly from increased product of Chancery fees. The payment from this Suitors' Fee Fund for expenses of the courts, salaries, and compensations, amounted to 161,990*l.*, about the same sum as in the previous year, leaving 13,990*l.* as the excess of income over expenditure in the year, instead of the previous year's sorry surplus of 356*l.* Adding the 99,252*l.* cash in hand at the beginning of the year, the balance in hand in November, 1864, on the Suitors' Fee Fund account is 'brought up to the respectable sum of 113,152*l.*

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After the registration of the declaration the proprietor may issue debentures in a given form, which debentures are to be for equal sums of money, to be numbered consecutively, and, if desired, to have coupons attached, which may be discharged by payment to the bearer. The registration of a debenture is to relate back to that of the declaration, and to prevail over any title registered since the declaration; but all registered debentures under the same declaration are to be payable without preference. These debentures may be transferred so as to place the transferee in the same position exactly as the transferor. And no debenture or transfer is before registration to have any operation on the property charged. A debenture is to be personal estate; no trust affecting it is to change the land or owner of it, notwithstanding actual notice; and it is to be an investment, within any power or trust, present or future, which requires money to be invested on mortgage or real security. If the registered holder of a debenture fails to receive payment for thirty days, or if there be any other reasonable

ground, the proprietor may apply to the Court of Chancery to be allowed to pay the money into court.

If default be made in payment of a debenture after seven days' notice, the registered owner of it may give a second notice of his intending to apply to the Court of Chancery, and, not earlier than fourteen days, or later than three months, may apply to that Court to appoint a liquidator and banker. And when such persons are appointed, the fullest powers are given for the management and sale of the land, and the payment of the incumbrances. This remedy, through the Court of Chancery, is to be the only one to which the debenture owner is to be entitled, against the property charged.

The first thing that strikes one in reading this act, is a difficulty arising on three of its provisions, which are of considerable importance, viz. the provisions, that the registration of a debenture shall relate back to the registration of declaration; that there shall be no priority, by means of registration, between debentures under the same declaration; and that, before registration, the debenture or its transfer is to have no effect on the property charged. What, we presume, is intended, though perhaps not very clearly expressed, is this—that as far as the sum mentioned in the declaration, such sum is to be an incumbrance, for the benefit of all debentures under it, in priority of all later incumbrances, but is to be divided *pari passu* between such debentures, whatever the date of their registration. Now, in the first place, it is a questionable matter, whether the later incumbrancer should be affected up to the amount of the registered declaration, and not merely to some smaller sum, the aggregate of registered debentures; but, at all events, in the second place, it seems absolutely necessary that there should be some priority between the debentures, or that some distinct power should be given to the registrar to refuse to register, in order to prevent a gross fraud being perpetrated. As the matter stands, there is nothing to prevent a man from issuing debentures to any amount in excess of the sum mentioned in the declaration, and to save the first debenture holders (notwithstanding they have registered immediately) from coming in merely *pari passu* with the whole of the later ones. It need hardly be pointed out, that unless this be most clearly obviated, the act would be a dead letter, for no one would advance money under such circumstances.

Another thing that strikes one is, whether it is advisable to allow the declaration of charge to contain special powers, conditions, and provisions, according to the fancy of each proprietor, or whether the incumbrance should not always be of an uniform character.

A third matter is, that the forms require that their execution shall be attested by a solicitor. This seems totally needless, and merely to give a loophole for unnecessary expense.

And, lastly, it is a matter worthy of consideration, whether the provisions as to the debentures, being real securities within the meaning of trusts and powers, should be passed in its present form.

Subject to these observations, and to any minor



difficulties which may exist, but not have struck us, the act seems to us to be, not only unobjectionable in principle, but fair and politic. It really comes to this, that the promoters of this bill desire that the owners of real property should be able to raise money without the expense and delay of the present system; without (if they provide against the difficulty we have pointed out) making the security on real property less safe. What possible impropriety or danger there can be in this we cannot conceive.

### THE PARTNERSHIP BILL.

THE advocates of credit without debt have learned tactics, if not wisdom, from experience. When it was first suggested that traders should be enabled to obtain goods and money on credit without contracting any liability to pay, and without resorting to the machinery of a joint-stock company, the proposal was defended on the ground that contracts ought to be free, and that if one party was willing to borrow and the other to lend on such terms, the law ought not to hinder them. It was not seen that the law as it existed did not interfere with such contracts, but it was seen that, if special facilities were provided for trading on such terms, the possible creditors of such privileged traders would at least be entitled to clear notice of the terms, to be conveyed by registration, and a distinctive addition to the name of the firm. But the commercial morality of the present generation differs from that of the last; and it is now felt, that while it is most desirable that every one should take his chance of gain without incurring any risk of loss, it is most undesirable that those to whom the risk is to be transferred should have any notice of the arrangement. To impose upon persons trading with limited liability the use of a name indicating the fact, is now, as Mr. Arthur Ryland naively confessed, "felt by commercial men to be an awkward requirement!" It is most unfair—so reason the enlightened commercial men of Birmingham—that the law should interfere to prevent men from trading on the understanding that the person to whom credit is given shall not be personally liable to pay; but it would be most awkward, if the law were altered so as to allow of such dealings, to require that the party giving the credit should be aware of the terms on which it is given. Accordingly, when Mr. Scholefield was entrusted with a bill for extending what is called the principle of limited liability to private firms, it was attempted to disarm opposition by providing the measure with machinery for registration in the office of the registrar of joint-stock companies, which was felt to be harmless, because the registrar is not a tattler, and no one invades the privacy of his office; but the awkward requirement of a really public notice, in the shape of a distinctive addition to the name, was carefully avoided; and when Mr. T. Baring succeeded in carrying an amendment, requiring every partnership trading with limited liability to add the word "registered" to its name, Mr. Scholefield was with difficulty persuaded to proceed with his bill so deformed. It was ultimately dropped, and we now see why. Registration per se, it is admitted, would be useless. Let us, then, have no registration. If the firm is not registered, no one can demand that it shall be described as "registered." Let the secret of its peculiar constitution be confided exclusively to those whom it most concerns—the partners themselves. Let us enact a general rule, without the incumbrance of useless exceptions and details. So, a new bill is framed, dealing with rules of law only, providing no machinery or checks of any kind; and in order to avoid inconvenient references to past

attempts, the former promoters of this great reform retire, and the new bill is brought in by Messrs. Dodson, Milner Gibson, and Hutt.

They propose to enact these rules:—

1. A contract to receive a share of the profits of a business, in consideration of a loan, shall not make the lender liable as a partner.

2. Money lent on such a contract shall not, in case of death or bankruptcy, be recovered in competition with other debts.

3. A person in the character of servant or agent in a business may receive, or be entitled to receive, a share of the profits, without being liable as a partner.

4. The widow or child of a deceased partner may receive a share of the profits of a business carried on by the surviving partner, without being liable as a partner.

That is the whole of the bill; simple as it is, it does not, perhaps, quite satisfy its promoters. It will not work without a dummy. But dummies are abundant and cheap. The following example will illustrate the use of them:—A. and B. the principals, and C. the dummy, carry on business under the firm of C. & Co. (for the use of A.'s name or B.'s name would involve a responsibility, against which the bill does not provide); A. is called "manager" or "head clerk," with a fixed yearly salary, in respect of any arrears of which he may compete with the creditors of the firm, and also a right to receive nine-twentieths of the profits. B. lends the capital, for which he receives one-half of the profits; and C. takes down the shutters, with a nominal right to receive the remaining twentieth of the profits, and a real liability to be kicked out, if he claims more than his porter's wages of 20s. a week.

It is scarcely necessary to point out defects of detail in a bill which has no other than a vicious object; but we may notice, in illustration of the difficulty of altering any well-founded rule of the common law, that the measure, by abolishing the significance of the main element and test of partnership liability,—the right to share in profits,—would give undue importance to those hitherto subordinate indications or tests of partnership interest, with which the bill does not meddle. When participating in profits is no longer partnership, i. e. participation in profits (for so with equal contempt of language, logic, and expediency, it is proposed to enact), what real or apparent interference in the business will be sufficient to induce partnership liability? How is a creditor, who, if he were told plainly, that Mr. B. participates in the profits, would not be entitled thence to infer B.'s partnership, to infer it from acts which are now, as it were, secondary evidence of partnership only because they imply a right to profit? The firm is A.; B. takes his profits in A.'s name; the voice is Jacob's voice, but the hands are the hands of Esau. Will B. make himself liable by interfering in the conduct of the business? Perhaps yes, if he does not call himself servant or agent; certainly no, if he so calls himself: the bill contains a clause expressly to that effect. So that B. may furnish all the capital, and be the sole manager of the business, and take substantially all the profits, if he only uses A.'s name, or any other name than his own, and gives A. a right, which may or may not be enforced, or may be neutralised by any one of a thousand devices, to the smallest conceivable fraction of the profits. Everything will depend upon the terms, whether written or merely spoken, in which A. and B. make their secret agreement.

The plain rule of the common law, that a debt is the debt of the person who induces the credit, and therefore, in commercial transactions, the sole end of which is profit, is the debt of the person or persons

seeking the profit, is the only conceivable rule on the subject, and can never be tampered with without corrupting mercantile morality, and introducing endless uncertainty and contradiction into the law.

## Imperial Parliament.

HOUSE OF LORDS.—*Thursday, March 9.*

### IMPRISONMENT FOR DEBT.

The Lord Chancellor said he proposed to lay upon the table of the House a bill which he regarded as one of very great importance. Its object was to abolish imprisonment for debt, or rather so much of it as still continued in operation. Their Lordships were aware that the Act for the Amendment of the Law of Bankruptcy, which had been passed two or three years back, contained a provision empowering the registrars of the Court of Bankruptcy to visit prisons, and to adjudge bankrupt those whom they found imprisoned there for debt. The result of that provision had been most beneficial, and one of its immediate effects was, that the Queen's Bench Prison was closed; nor had any one complained that the remedy of the *bona fide* creditor had, in consequence of the operation of the measure, been abridged. That being so, it was ascertained by the returns on the subject, that those who were now in prison for debt generally consisted of persons who found their way there for the purpose of being discharged under the bankruptcy law, and the consequence was, that there was a great number of applications for discharge. He thought, therefore, that their Lordships would be justified in taking one step further; for it appeared to him, and it was the general opinion throughout Europe, that the old practice of imprisoning a debtor, merely on account of a debt not being paid, was neither quite just or expedient. Their Lordships were probably aware that there was a committee now sitting for the purpose of inquiring into the whole of the bankrupt law, and it was probable that the report of that committee might be made at no very distant period. From what, however, he had been able to gather of the probable contents of their report, it was likely that a very considerable time would be required for the preparation of a bill to carry its recommendations into effect. He did not under those circumstances anticipate that Parliament would be in a position to legislate upon the ground of the report during the present session, and he therefore proposed by the present bill to make an enactment which he had reason to believe would be in perfect harmony with the recommendations of the committee. This proposal was, that no order of discharge granted to a debtor should have the effect of releasing his future goods unless he paid a dividend of at least 5s. in the pound under the Bankruptcy Act. The present state of the law was, that every man who was brought up for discharge as a bankrupt was in a better condition if he had no property at all than if he had some; for if he had no property, and set his estate down at nil, no one opposed him, and he got his discharge as a matter of course. I propose that no discharge shall avail to release the future property of a bankrupt unless he pays a dividend of 5s. in the pound, or obtains the assent to his discharge of five-sixths of his creditors in point of value. There will be no hardship in discriminating between the honest and fraudulent bankrupt, and, in imposing this condition upon the order of discharge, by which future property will be released from liability, I hope your Lordships will give the bill a first reading.

Lord Chelmsford inquired whether the bill would take away from the judges of county courts the power to commit in default of satisfaction of judgment.

The Lord Chancellor said that the bill entirely reserved the existing county court system.

The bill was then read a first time.

*Friday, March 10.*

The Dublin South Suburban Railway Bill was read a second time.

### ATTORNEYS AND SOLICITORS' BILL.

The Lord Chancellor moved that this bill should be read a second time.

Lord St. Leonards said, that the first clause of the bill gave to every attorney the power of making a bargain with his client at any time as to the sum for which he would con-

duct a particular business, although that sum should be in direct violation of the Orders of the Court fixing the amount of attorneys' fees in every particular instance. The same clause gave to an attorney interest from the time of demand. The third provided, that an attorney who was executor or administrator might act as attorney to the estate, and charge his fees as such; and the last clause provided, that an attorney or solicitor might take from his client security for future costs; such a thing as that had never been permitted by the Courts of England, and ought not to be allowed; because, if an attorney could obtain security for future costs, he would be utterly reckless, and need not care in what litigation he involved his client. He would shew their Lordships what had been the settled practice of the courts of law and equity as to the relation between attorneys and solicitors and their clients. Lord Harwicke, in a case which was reported in 2 Atk. 27, said, that since the passing of the act for taxing attorneys' costs, 2 Geo. 2, c. 23, solicitors had been considered as officers of justice, stated fees had been allowed to them; and in all the courts, more especially in courts of law, certain rules had been laid down to regulate their behaviour to their clients. Lord Loughborough and Lord Eldon had also laid it down as a well-known principle of law, that under any circumstances, the charges of an attorney were taxable; and even in cases where he might have already obtained payment, the Court would interfere if there was any ground for suspecting the existence of any overcharge or fraud on his part. He had quoted these authorities to shew that the law had always regarded transactions between attorneys and their clients as resting upon a totally different foundation to that of ordinary transactions. Supposing, for instance, an attorney were to purchase his client's estate, it would scarcely be possible for him to maintain such purchase in equity, notwithstanding the value of the property were well ascertained, and the client had the advice of a second attorney. The whole system was well devised for protecting the client from the possible improper conduct of the attorney. It would be far from pleasant to him who had had to deal for so many years with attorneys, to speak of them with disrespect as a class, and he distinctly disclaimed any such intention; still, there were persons in that profession who might endeavour to take advantage of any bill giving them uncontrolled power over their clients. As the law now stood, an attorney could make no bargain with his client for any given sum for his services. The law from the earliest period had provided for the taxation of the costs of attorneys, and the costs which they were entitled to charge had been most accurately determined. From the time of the 3 James I down to the present day, bills had been introduced to regulate the costs of attorneys, but in every case they contained most stringent provisions against the attorney, and always subjected his charges to taxation. In 1843, by the 6 & 7 Vict. c. 73, all the laws upon this subject were consolidated, simplified, and amended. One of the most material provisions of the bill was contained in the 37th section, which enacted, that no attorney or solicitor should be entitled to commence an action for fees until the expiration of one month after the delivery of his bill, or until it was duly taxed. The 5 & 6 Vict. c. 102, provided six Taxing Masters, with a salary of 2000*l.* per annum each, and certain returns shewed that the expenses of the Taxing Masters' offices amounted to 16,000*l.* or 17,000*l.* per annum. The proposed bill was intended to strike at the root of all these laws, and to render the office of the Taxing Master utterly useless and nugatory. It overruled the general practice, and practically repealed all former acts of Parliament upon the subject, by rendering it lawful for every attorney and solicitor to enter into a contract with his client regulating the amount of his remuneration. There was a rather extraordinary case shewing what the effect was of a man making an agreement with his client for work done. It was that of Mr. Kennedy, a barrister, who admittedly had carried the case of his client through a long litigation with great tact, judgment, and nerve. He thought that, as a barrister, he was entitled to make a bargain with his client, and accordingly he did make a bargain with her that he was to receive 20,000*l.* for his services in the suit. The lady did what ladies sometimes would do—changed her mind, and refused to pay the money. Mr. Kennedy, thinking that law was on his side, went to every Court in Westminster-hall; but all the Courts decided what they ought to have decided—that he was not entitled to recover a single shilling; so that all his ability had



been successfully employed for his client without any remuneration for himself. Was Parliament now to enable attorneys to do what barristers could not do? Would their Lordships enable attorneys to do that which, from the nature of things, ought not to be done? Coming to another portion of his noble and learned friend's measure, he had to observe that in the bill of last year his noble and learned friend proposed that if, of two trustees or executors, one, being an attorney, proposed to commence a suit, he would not be entitled to his fees as an attorney unless he had obtained the consent of the other trustee or executor to the suit being instituted; but under the bill now before their Lordships an attorney in such a position was not required to obtain the consent of his co-trustee nor of his cestui que trust, so that his first act might be to institute a suit against himself. The bill would do as much damage to the client as to the solicitor whom it was meant to benefit, and it would make the relations between them much less amicable and confidential than they formerly were.

The Lord Chancellor said, his noble and learned friend complained of this bill on two grounds—first, that it altered the law, which was perfectly true; and next that it was a law of great antiquity. That complaint, too, was true, for this law, which partook of the error and absurdity of ancient laws, was practically the last relic which remained in our institutions of the attempt by law to regulate the remuneration of persons employed in any trade, calling, or profession. Any man employing a surveyor, architect, or engineer was enabled to enter into a contract with him as to the remuneration which he should receive, but the solicitor and client were debarred from making any such contract. The first evil attendant on this state of things was, that a client, when he employed a solicitor, never knew to what amount of liability he was subjecting himself. If a man wished to sell an estate, and for that purpose applied to an auctioneer or agent, he would learn at once the commission he would be charged; but if he employed a solicitor he would have no means of knowing what the amount of his bill of costs would be. He contended, therefore, that it was impolitic to maintain a restriction which prevented solicitors and clients from entering into arrangements which would meet the interests of both parties. The present mode of remuneration was really productive of injury to both parties. The solicitor derived a benefit from delay and procrastination, which were injurious to the client. The longer the time employed in performing the business, the greater would be the solicitor's remuneration. If the parties were allowed to agree upon a certain amount of charge, there would be a pressure upon the solicitor to expedite the business, that he might the sooner receive what was due to him. The great evil of the present system was, that the solicitor, in common justice to himself, was compelled to devise a mode of remuneration most injurious to the client, while, at the same time, it was not sufficiently beneficial to himself. It was this great vice, this old folly, which the noble and learned Lord sought to maintain. The attorney was paid for every instrument which he prepared according to its length, and not according to its value. What was the consequence? Deeds swollen by redundant words, by a vast amount of useless verbosity, until the sense was obscured, and the truth hardly discernible, offering great facilities for obscurity, error, and uncertainty. A deed which at present consists of 100 folios of 72 words each, might with advantage be condensed into 20 folios. But in such a case the attorney, being paid according to the length of the deed, would only receive one-fifth of his proper remuneration, so that he was compelled to adhere to a practice which he knew to be injurious, merely because the law prescribes to him only that mode of remuneration. His noble and learned friend had said that very great evils would arise from placing attorneys in a position to be enabled to contract with their clients; but he (the Lord Chancellor) was at a loss to understand what possible evils could arise from that permission being granted. What harm could there be in allowing an attorney to say to his client who wished to sell an estate, that the charge would not exceed 150*l*.? It must be observed that the bill did not propose to give that power to any but clients who were perfectly competent sui juris, and able to enter into a contract. In all other cases—such as infants or married women—the ordinary bill of costs must still be sent in and be subjected to taxation. But instead of the proposed change being inexpedient, unjust,

and mischievous, he believed, that if the profession generally were consulted, they would declare that the present system was inexpedient, unjust, and mischievous, because they are compelled to resort to a mode of remuneration which did not represent that which they ought to have, but which did represent that which they ought not to do. The noble and learned Lord had also spoken of great evils likely to follow from that part of the bill giving to the attorney a right to interest upon the amount of his demand. But that was only a right which was enjoyed by all other persons who were employed to do work for others. A man having done the work, sent in his bill, and demanded payment, and from the time of such demand he was entitled to receive interest as compensation for the money which was detained from him. In the case of an attorney that was not so; but it was difficult to see why a different rule should prevail against him. The attorney, in many cases, was obliged to disburse large sums during the progress of the business; and when the business was completed it was only fair that he should receive payment, or be allowed to charge interest. His noble and learned friend also complained that it was unjust to give to an attorney power to take from his client security for costs; but if there was one point of the bill which he (the Lord Chancellor) thought would be more beneficial than another, it was that very power. That a rule existed forbidding attorneys from taking security for costs had been regretted by many judges. The bill did not propose to interfere with the law as it stood with relation to what was called champerty and maintenance; but there were many cases in which a man was unable to recover what was due to him, and it was proposed to allow him to give security for costs upon the amount he might recover. The object was to offer facility to the obtaining of justice, and to take away an impediment which now deprived many men, who had no other means of recovering it, of property due to them. His noble and learned friend had made other objections, and some of them referred to a clause which, indeed, was open to some question—the clause which provided that professional trustees should be at liberty to act as solicitors, and to be remunerated for so doing. For his own part he should have preferred the clause as it stood in the bill of last year; but that had not been the general feeling of the profession, and in deference to that feeling he had brought forward the clause in its present shape. The clause, however, would prevent much mischief from arising in cases where the remuneration of a solicitor trustee was not provided for. It constantly happened, that a testator had great confidence in a particular solicitor, or firm of solicitors, and therefore selected that solicitor, or one of the firm, to be one of his trustees, in order that his estate might have the benefit of the prudence, skill, and knowledge of the individual selected. But then the law stepped in, and said, that as the testator had neglected to direct that the individual selected as trustee should act as solicitor, and be remunerated as such, therefore the person so acting could not receive any remuneration. That really was a very inconvenient rule, and he had known many cases of hardship, where gentlemen, after devoting their time and attention to the winding up of a testator's affairs, ultimately found themselves deprived of all remuneration for their labours. If some power could be placed in the hands of the solicitors by which they would be authorised in entering into arrangements with their clients, he believed that the result would tend to the advantage, not only of the clients, but also of the profession itself; for he knew nothing which had done more harm to the profession of the law, as a science, than the objectionable method in which attorneys had been remunerated. The present system induced long fees. These, in their turn, led to long abstracts, entailing infinite expense in all transactions with regard to real property, and more particularly in the case of unregistered estates. He invited their Lordships, therefore, to accede to the principles of the bill, though there might be several particulars in the measure itself deserving attention and care.

Lord Chelmsford fully agreed with his noble and learned friend who had first addressed their Lordships, that the bill was vicious in principle. He fully concurred in the opinion, also, that the present mode of remunerating solicitors for what was called conveyancing business was objectionable. In alluding, however, to the "verbosity and redundancy of deeds," he believed his noble and learned friend had mistaken the effect for the cause, because it was not until 1843 that there

was any power instituted for taxing attorneys' bills upon conveyancing business. It was not, therefore, until 1843 that the present objectionable scale was introduced; but his noble and learned friend knew, that long before that period, leases, settlements, and conveyances had assumed all the verbosity of their present form. He believed that the prolixity of deeds arose from the fact, that the practice had been in use for many years; that it had undergone the test of judicial criticism; and that clients were generally afraid of departing from the usual custom, lest they should by so doing incur the chance of a flaw in their deeds. His noble and learned friend had justly complained of the present objectionable mode of remunerating solicitors by folios, and the number of words in each folio, but in his bill he proposed still to retain that system, except in cases where an attorney was willing to enter into an agreement with a client. He, however, regarded the client as a person who ought to be protected from the attorney. In entering into an agreement with a solicitor, the client could not be expected to know what would be a fair remuneration for a solicitor's labour. The solicitor, on the other hand, knew perfectly well what he was entitled to, and would take care in his agreement to realise as much as he would have been enabled to charge under the old system. He understood that in Scotland attorneys were remunerated in conveyancing business according to the value of the property; and some such system might, he thought, be introduced into this country. Of course, the per-centage upon a large property would not be the same as upon a small one. The method would, however, be much better than the one at present in use. He quite agreed in the opinion, that attorneys, as a rule, were not likely to enter into any agreements which would be unfair. As a body, they were as honourable as any other profession. Still, all were not so; and protection ought to be afforded by the law, in order to prevent a client falling into the hands of those solicitors who were not respectable, and who would be likely to take advantage of their clients. His noble and learned friend on the woolsack had described the existing arrangement as an ancient barbarism. He could only say it was a provision made by the Legislature for the protection of one of the parties concerned against the undue influence which the other might exercise over him. In the reign of James I, an act was passed to repress the misdemeanours of attorneys and solicitors, and to prevent unnecessary suits and charges. It was enacted by that statute that no solicitor or attorney should be allowed any fees alleged to have been paid to counsel, unless he was able to exhibit a receipt signed by the barrister in question. It was also provided, that no fees should be recovered by an attorney from any of his clients until the former had submitted a detailed bill of fees. From 1605 down to 1729 there was no inherent power in the courts of law to tax the bills of solicitors, although, no doubt, they exercised some sort of control over them. In 1729 a power of taxation was created over the accounts of agents in suits at law, and it was declared that all attorneys and solicitors should be bound to produce their accounts for taxation, and that if a sixpence were struck off, the attorney should pay all the costs of taxation. That system continued down to 1843, and worked so well, that in that year conveyancing and all other business was brought under the operation of the rule. The present measure would deprive clients of that protection, and he thought this was to be regretted. He might remind their Lordships that there were two kinds of costs—the costs between party and party, which the loser was obliged to pay, and the costs between client and attorney, which were taxed, but which each party had to pay for himself. The present bill, however, would deprive the client of the protection of taxation in regard to the costs he owed to his agent, apart from those which were recognised between party and party by the courts of law.

Lord Cranworth said, that the principle of the bill was to leave clients and attorneys to settle the charges between themselves; and that principle, in his opinion, was so sensible and convenient, that he held the burthen of argument lay with those who sought to deviate from it. There was a great distinction between contentious and conveyancing business. He doubted whether taxation had done much good in checking the length and tediousness of conveyancing transactions; and he did not know that the bill would have much effect in that direction, but was at least a right step. It should be borne in mind, that the case of conveyances was

one in which the attorney would have always to deal with educated persons, who might be presumed to be able to take care of their own interests; but then the case of contentious litigation was altogether different, and, so far as that was concerned, he entirely concurred in what had fallen from his hon. friend opposite. In that case, the costs which the losing party would have to pay were duly fixed by the Court; and if, by means of any previous contract, the attorney was able to get more than the amount so fixed, an injury would thus far be inflicted on his client. He was, therefore, of opinion that great difficulties would be the result, if the House were to depart from the salutary rule, that costs in contentious cases should be taxed and fixed by the Court. He also objected to the proposal, that a trustee, being an attorney, should be able to charge his own costs; for if there was any one principle better established in equity than another, it was, that no man having a fiduciary duty to perform should be able to place himself in a situation in which the obligation upon him to cut down expense should be in conflict with his interest to increase it. He did not, he might add, see the remotest reason why a solicitor should not be enabled to take security for costs; but although he thought the bill, as a whole, was of sufficient importance to entitle it to a second reading, he was of opinion that it would require considerable modification in committee.

The House then divided:—

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#### HOUSE OF COMMONS.—Friday, March 10.

##### LAW OF PATENTS.

In answer to Mr. Hibbert,

The Attorney-General said it was the intention of the Government to introduce a bill founded on some of the recommendations of the Commission for inquiring into the working of the Patent Law.

Wednesday, March 15.

##### JURIES IN CRIMINAL CASES BILL.

Sir C. O'Loughlin, in moving the second reading of this bill, said it might be described as a chapter of the proposed digest of the unwritten law. It used to be supposed that juries in criminal cases could not, under any circumstances, be discharged without giving a verdict. The judges had, however, taken upon themselves the right of discharging juries when they could not agree upon their verdict, and after they had been locked up a sufficient time. In the case of *Reg. v. Charlesworth*, the Lord Chief Justice said that the law was in so unsatisfactory a condition that he had not been able to make up his mind on the subject. The question seemed, therefore, to be one for legislation, and he had endeavoured to declare in one short bill the law on the subject of discharging juries. He proposed to authorise the judge to order refreshments to be given to the jury. At present when they were locked up to decide upon a criminal case, they were kept without food, drink, or fuel. This was a relic of a barbarous law which more than one judge had declared ought to be got rid of. The 1st clause declared that in a criminal trial a jury should not separate without leave, but that such separation should not invalidate their verdict. The 2nd clause enacted that if a jury in a criminal case separated without leave, the judge might either swear a new jury or continue the trial with the original jury, and might fine the jurymen. According to the present state of the law, a jury might be allowed to separate if the trial lasted for more than one day in cases of misdemeanour, but not of felony. Under the 4th and 5th clauses, questions might arise which the House might scarcely wish to sanction; for instance, whether the judge ought to have the power to discharge a jury, when once sworn, before they had retired to consider their verdict. He admitted that such a power was liable to abuse, and in political cases it had been abused; when, for example, Chief Justice Scroggs discharged the jury in order to enable the Crown to get up a better case against the prisoners. He would not contend for such a power, but he was prepared to submit the question to the House, whether it was proper that the judges should have it. In the case of *Reg. v. Charlesworth*, the judges decided that they had the

power, but that it ought not to be exercised without strong reasons. The 6th clause met the case of a judge being unable to continue the trial, when he should propose that the jury should be discharged. The other clauses provided, that after a jury had retired they might be discharged in case of the illness of one of the jurors; that, in case of disagreement, the judge might discharge them if he thought fit after they had been kept together for a reasonable time; that there should be no appeal from the decision of the judge; and that in all cases where the jurors had been discharged the trial might take place again.

The Solicitor-General said, the hon. and learned gentleman had spoken of the bill as a digest, but he begged to say it was not; because a digest of the law relating to jurors would have to deal with their qualifications, the mode of summoning juries, and a number of other questions of great importance, upon which the bill did not touch. With respect to so much of the bill as was declaratory, no doubt, where the law was settled, the multiplication of acts of Parliament was mischievous. Now, there were many cases contemplated in this bill, with regard to which declarations were not at all required. They did not want a declaration that a judge had power to fine jurors, or that jurors might be discharged in cases of illness; or that if a jury could not agree the judge might discharge them; or that where a jury was discharged the trial should be held to be null and void. All these declarations were quite unnecessary, and therefore mischievous. But with respect to those portions of the bill which were not declaratory, there were some serious objections. The Secretary for the Home Department had thought it his duty to consult the Chief Justices with regard to the provisions of the bill, and they were both opposed to them. There was one provision which might possibly be salutary—namely, that contained in the 7th clause, to the effect, that after a jury in a criminal case should have retired to consider their verdict, it should be lawful for the judge to order them reasonable refreshment. If that provision were adopted in civil as well as criminal cases, it would be salutary; and he thought that his hon. and learned friend would be well advised to withdraw this bill, and confine his attention to a measure which should embody that provision. The bill would give the judge power to allow the jury to separate in cases of felony or treason which should last more than one day. He was not quite certain that it would be desirable to entrust the judges with that power. And clause 4 raised a very grave constitutional question; for it was to this effect—that after a party was given in charge to a jury, and before the jury had retired to consider their verdict, it should be lawful for the judge to discharge the jury if he was of opinion that a case of sufficient necessity had arisen, or deemed it right for purposes of justice. Now, that was a power which he thought it would be unwise to give. There had been times when judges had been under the influence of the Crown, and in which that power had been exercised to the injury of the subject. Chief Justice Scroggs, in order to give the Crown an opportunity of getting up a better case against Sir J. Fenwick and Mr. Whitbread, had discharged the jury, and those gentlemen were found guilty upon a second trial. That was a power which had been disapproved by Lord Coke and other eminent judges. In the case of *Reg. v. Charsenworth*, to which his hon. and learned friend had alluded, a witness did not appear, and Mr. Justice Hill, thinking that he had been tampered with, took upon himself to discharge the jury. The case came subsequently before the Court of Queen's Bench, and his hon. and learned friend was not correct in saying that the judges decided that they possessed the power. The sole question decided was, that the jury having been discharged, rightly or wrongly, the defendant could not say that he had been acquitted. Two of the judges thought it clearly wrong to discharge the jury; another thought it was right, and another doubted.

Mr. D. Griffith hoped, as the Solicitor-General was willing that reasonable refreshment should be given to jurors, that the question of remuneration for them would be also favourably considered.

Mr. Longfield thought that his hon. and learned friend had no option but to withdraw the bill, though there was no doubt that some amendment of the law was required.

The bill was then, by leave, withdrawn.

## BILL IN PROGRESS.

### *A Bill to amend the Law of Partnership.*

[Mr. Dodson, Mr. Milner Gibson, and Mr. Hutt.]

Sect. 1. The advance of money by way of loan to a person engaged or about to engage in any trade upon a contract with such person, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, or bear a share of the loss arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade, or render him responsible as such.

2. In the event of any such trader as aforesaid being adjudged a bankrupt, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to receive any portion of his principal, or of the profits or interest payable in respect of such loan, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

3. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein.

4. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner or to be subject to any liabilities incurred by such trader.

5. In the construction of this act the word "person" shall include a partnership firm, a joint-stock company, and a corporation.

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THE Wills Act was founded on the recommendation of the able lawyers, who, in 1828, were appointed to inquire into the state of the law of real property in England, with a view to its improvement, and the bill was drawn by a conveyancer in good repute for skill and experience; yet it cannot be regarded as a very successful effort of legislation. Indeed, the many questions which have been raised upon it, especially upon the clauses which interfere with established rules of construction, shew how much difficulty and risk must be encountered in attempting to amend the law of property. Yet this is a field in which, in these days of inconsiderate legislation, every shallow pretender to the character of a law reformer will venture to dig.

The 10th section of the Wills Act, though it has not been prolific of litigation, has given rise in its application to a question, or rather, perhaps, to questions of considerable nicety and difficulty; and, notwithstanding the recent decision by the Lord Chancellor in the case of *Taylor v. Meads* (11 Jur., N.S., part 1, p. 166), its construction or scope cannot yet be regarded as settled. The clause, after enacting that no appointment made by will in exercise of any power shall be valid, unless the will be executed in manner required by the act, enacts, that "Every will executed in manner hereinbefore required, shall, *so far as respects the execution and attestation thereof*, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity."

The clause must have been framed without consideration of the settled rule, that a power to be exercised by any "instrument or writing," with or without any special solemnity of execution or attestation, such as sealing or attestation by several witnesses, might be exercised by a will; although, if the power required a deed, without any alternative, an appointment by a testamentary instrument, sealed and delivered, would not be a good execution (*Darlington v. Pultney*, Cowp. 260), a deed being in its nature irrevocable. Taking, first, powers created before the passing of the act, it was clear that a power to appoint by any instrument or writing, sealed and delivered in the presence of and attested by three or more credible witnesses, could before the act be exercised by will or testamentary instrument so executed and attested. (*Kibbet v. Lee*, Hob. 312; *Roscommon v. Fowke*, 4 B. P. O. 528). It was, therefore, a power of appointment by will, and the act seems to have made no alteration with respect to such a power beyond the substitution of the statutory solemnities for those required by the instrument creating the power. Now, it is to be observed, that the ordinary definition

of a deed is, paper or parchment, sealing, and delivery. "A deed is a writing or instrument, written on paper or parchment, sealed and delivered, to prove and testify the agreement of the parties whose deed it is to the things contained in the deed." (Shep. Touch. 50). Here, certainly, it is suggested that the deed must include an agreement, though that is unnecessary, as in the case of an appointment or a disclaimer by deed-poll. But the definition in the Touchstone is imperfect, in omitting the condition that the instrument is not a deed unless it is to take effect according to its purport from the time of the delivery, and is not to be "ambulatory" until the death of the maker. Since the statute, as well as before it, an instrument signed, sealed, and delivered, may be testamentary in its character, incapable of operating as a deed, but capable, if duly executed, of operating as a will. The question, then, is, whether the 10th section, by dispensing with certain formalities, has in any other respect altered the construction of powers of appointment? Can it, for instance, be contended that a power created since the statute, to be exercised "by any instrument, signed, sealed, and delivered in the presence of and attested by three witnesses," could not be exercised by a testamentary instrument so executed and attested; in other words, that the donor of the power, by requiring a seal or a superfluous number of witnesses, has manifested his meaning to be, that the instrument must be a deed or a writing not testamentary? To give to the enactment such an operation would, it may be urged, be a reversal of the established rule of construction in such cases. We do not regulate the construction of an executory limitation by reference to the rule against perpetuities, but we first determine the meaning of the words, and then consider whether effect can lawfully be given to that meaning.

On the other hand, it may be said, that powers of appointment, framed since the statute, may properly receive a different construction, because language must always be interpreted with regard to the state of things existing for the time being. If a deed is named, it must be understood to be such an instrument as is a deed according to the law then in force. So of a will; and if, instead of using the technical word, the thing intended is described or defined, with mere or less of precision, the description or definition must be interpreted with reference to the rules or practice then in force. Therefore, when sealing or a cloud of witnesses might lawfully be made a condition of testamentary appointment, the requiring of such solemnities would not shew that a will was not contemplated; but now, when such conditions are wholly ineffectual if the appointment is to be testamentary, does not the imposition of them shew, in the absence of any expression to the contrary, that the donor meant such an instrument as could lawfully be made the subject of such a condition? Before the statute, effect was given to every word of the power, by allowing of an appointment executed in the manner prescribed; and a will so executed would be an instrument, signed &c. But now, under the statute, to strike out the prescribed solemnities would be to interfere



without warrant or necessity. If, indeed, the power expressly names "a will" or "a testamentary instrument," executed with other than the statutory solemnities, there can be no room for doubt; there is a clear collision with the statute, and the case is within its very words.

The application of the clause first came into question in the case of *Buckell v. Blenkhorn* (5 Hare, 131), where, by a deed dated after the passing of the act, a power of appointment was created to be exercised "by any deed or deeds, writing or writings, to be sealed and delivered in the presence of and attested by one witness or more." Sir J. Wigram, V. C., held, that the power was well exercised by a will, duly executed under the statute, but not executed according to the power.

In *Collard v. Sampson* (16 Beav. 543) the question arose upon a power created by indenture, executed in 1835, before the passing of the act, to be exercised by any deed or deeds, writing or writings, under hand and seal, and attested by two witnesses; and the present Master of the Rolls, contrary to his own opinion, decided that a purchaser must accept a title depending under an appointment by an unsealed will, expressly on the authority of *Buckell v. Blenkhorn*, which, he said, had never been doubted. On appeal, the Lords Justices held, that the question could not be regarded as finally settled by the single decision in *Buckell v. Blenkhorn*, and declined to force the title upon the purchaser. (4 De G., Mac., & G. 224). We venture to think, that the validity of the decision of the Vice-Chancellor had nothing to do with the question in *Collard v. Sampson*; and that it was clear, beyond any question, that the power, having been created before the Wills Act, was a power to appoint by deed or will; and, therefore, that an appointment under it by a testamentary instrument was governed by the statute.

In *West v. Kay* (Kay, 385) the question also arose upon a power created by deed in 1835, and worded similarly to the powers which were the subjects of the decision already cited; and Sir W. P. Wood, V. C., upon a special case, decided that the statute did not apply so as to give effect to an unsealed testamentary appointment; and he based his decision on the ground that the donor had not indicated any intention that the instrument should be testamentary, but had indicated an intention that it should be under seal.

In *Orange v. Pickford* (4 Drew. 363; 4 Jur., N. S., part 1, p. 649) Sir R. T. Kindersley, V. C., followed the authority of *Buckell v. Blenkhorn*; but, as appears from the report in THE JURIST, with reference to a power created in 1823.

Lastly, in *Taylor v. Meads* (10 Jur., part 1, p. 1012), where the power was contained in a will, dated 1841 (subsequently to the passing of the Wills Act), and was to be exercised "by any instrument in writing, signed, sealed, and delivered in the presence of two witnesses," the Master of the Rolls decided in favour of an appointment by an unsealed will. But this decision was reversed by the Lord Chancellor (11 Jur., N. S., part 1, p. 166), and, we conceive, rightly; although his Lordship, in his judgment, takes no

notice of the essential distinction between powers created before the Wills Act and those created subsequently; but lays down the general rule, that the statute only applies to powers "requiring specifically a will."

It will be observed, that although in *Taylor v. Meads* the Lord Chancellor differed from the Master of the Rolls in his doctrine, he agreed with him in holding that the property was effectually disposed of by the will; for there was a limitation in default of appointment, in trust for the donee of the power, her heirs and assigns, for her separate use; under which his Lordship held that she could devise the equitable fee. The case, therefore, is scarcely to be regarded as a conclusive authority against the doctrine in *Buckell v. Blenkhorn*.

The Lord Chancellor concluded his judgment on this part of the case with the following unintelligible, but not the less characteristic sentence:—"The difficulty, as is usual, does not arise from any uncertainty as to the principle, but from the reports of conflicting and inconsistent decisions—a state of things which is now the fruitful cause of litigation."

It is to be observed, that Lord St. Leonards clearly approves of the decision in *Buckell v. Blenkhorn* (Treatise on Powers, 218, 8th ed.; Real Prop. Stat. 333, 2nd ed.)

It has been supposed that a will executed according to the requisitions of the power might, in cases falling within the principle of *Taylor v. Meads*, be a good execution of the power. But this is clearly not so. The decision can only rest on the assumption that the power does not authorise a testamentary appointment.

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THE preliminary address of the members of the council for law reporting, who have been appointed by Lincoln's-inn, the Temples, and the Incorporated Law Society, is in the hands of our readers. The expediency of making the application for subscribers the first step in their proceedings, will be variously estimated. Doubtless, many persons who wish well to the undertaking might hesitate to promote the establishment of a new series of reports unless they were assured that it would be preceded by, or necessarily involve, the extinction of one at least of those which exist. But this is, in substance, provided for by the scheme which the council are appointed to carry into effect. The 12th clause of the scheme provides, that the existing authorised reporters shall have the offer of the first appointments in their respective courts; and in other appointments of reporters, a preference may, if the council think fit, be given to the reporters of any publication which may be discontinued in consequence of the issue of the reports recommended by the committee. The council cannot make any definite offer to the existing reporters until they have ascertained from the subscription list the probable amount of the funds to be disposed of; and the reporters cannot be expected to relinquish, even provisionally, their present independent position until they know what forces will be arrayed against them.

The committee ask for at least 2000 subscribers, at



five guineas. We think that the movement has advanced so steadily and so far, that a much more extensive list may be relied on. But every member of either branch of the profession who desires the amendment of the present intolerable system should act as if the result depended on himself, and send in his name at once.

Serjeant's-inn has neither discouraged nor actively supported the scheme, although it is known that many of the judges approve of it. They doubtless feel that their relations to the present reporters are such as to render it improper that they should throw their weight into either scale.

### Correspondence.

TAYLOR v. MEADS.

TO THE EDITOR OF "THE JURIST."

SIR,—This case is important for other reasons than those so ably stated by your correspondent. If the Master of the Rolls's decision was wrong, I suppose acts of Parliament are not binding on the Court of Chancery. Thus argues the Chancellor, "A will literally answers the description of an instrument in writing. The Statute of Wills, sect. 10, applies to powers to be executed by will, but as an instrument in writing is not literally a will, the statute does not apply to powers to be executed by an instrument in writing." I used to fancy that general terms included particular terms, without being expressly specified, and that as an instrument in writing comprises both a deed and a will, both those documents are expressed in the general term. The Chancellor, who draws such excellent acts of Parliament, is doubtless right in refusing to be bound by such idle rules of logic.

On another subject may I draw your attention to the fact, that Locke King's Act does not touch leaseholds for years, and cannot, I conceive, be conclusive against your correspondent.

Lincoln's Inn, March 6.

T. D. B.

[There is indeed authority, but we are not aware of any reason for excluding leaseholds, whether for years or for lives, from the operation of Locke King's Act. The decision in *Solomon v. Solomon* (10 Jur., N. S., part 1, p. 331) cannot be supported without striking words out of the act.—Ed.]

### THE LAND DEBENTURE BILL OF MESSRS. AYRTON AND COLLINS.

TO THE EDITOR OF "THE JURIST."

SIR,—An object may be innocent and even laudable in itself, and yet there may be good reasons for not making it too easy of attainment. It is right, for instance, that social opinions and censures should bear in some degree on the personal habits of individuals, but that consideration does not justify the "permissive bill." Our modern reformers are too apt, however, to put on blinkers and run straight at the object before them, without looking to the right or the left. Before we remove obstacles to a given course of action, which our ancestors could have removed long ago, if they had thought fit, it is worth while to inquire, at least, whether their inaction was in any degree sanctioned by their traditional wisdom.

Now, in the matter of facilitating charges on land, we may learn from the experience of Ireland. The registry and system of judgment liens there, gave, in a clumsy manner, those facilities of multiplying charges and holders of charges for which Messrs. Ayrton and Collins undertake to provide more efficient machines. What was the consequence? Charges on land to the last shilling of its value—redemption hopeless—the equity of redemption valueless—the nominal owner indifferent to the condition of his exhausted inheritance—the charges divided among so many incumbancers, that no one had any paramount interest in the cultivation and welfare of the estate. Concert in any system of management was almost impossible; and at length Hercules was invoked, and appeared in the shape of the Incumbered Estates Court.

From this state of things we have hitherto been saved in England, by exemption from a general registry, and by the beneficial operation of the rule, that the first mortgagee, having the legal estate, may make further advances, or buy up subsequent charges, without being bound to inquire as to the existence of any intermediate incumbrances on the equity of redemption; so that the Arcadian scene contemplated by Messrs. Ayrton and Collins, of a crowd of secure and careless little debenture holders sitting or playing under the shade of the registered title, has hitherto been impossible in England, and every mortgaged estate has either remained moderately incumbered, and still cared for by its owners, or has passed into the hands of a single substantial mortgagee or his vendee, having a like interest in the maintenance of the buildings, and the cultivation of the land. So far, indeed, is the object proposed by the bill in question from being desirable, that the difficulty of restraining the growth of puisne incumbrances on registered titles has been the main objection with many thoughtful lawyers to a registration of title. But, as we are fast forgetting that commercial morality is of more importance than the employment of capital, so we seem to be forgetting that the title to land involves duties as well as rights, and is not merely a thing to draw rents from, to sell, or to mortgage. To those legislators who view the bill with favour, I would recommend a careful perusal of Mr. H. R. Droop's judicious remarks "On certain beneficial Effects of the Rule of Tacking, as applied in England to Incumbrances upon Real Estate"—a paper read before the Juridical Society in July, 1864, and published in the last part of their transactions.

G. S.

### Reviews.

*The Laws relating to Public Health.* By THOMAS BAKER, Esq.

[W. Maxwell; H. Sweet; and Stevens, Sons, & Haynes.]

THE reign of Queen Victoria is already remarkable for the number of acts which the Legislature has passed since its commencement for improving the social condition and comforts of her subjects, and especially the poorer part of them. Care has been taken to provide, by legislative enactments, for the general health, for the comfortable housing of the labouring classes, for the protection of the poor lunatic, for the discovery and destruction of unwholesome and diseased food, and for many other matters in which those who are unable to protect themselves require the aid of a watchful and philanthropic Legislature. The result of these wise measures is, that life is prolonged, sickness diminished, and the general condition of the working classes improved.

These considerations would, we think, impress themselves upon the minds of most persons who read Mr. Baker's book, containing, as it does, an orderly arrangement of the enactments relating to the several subjects which we have mentioned, and an appendix, setting forth the statutes themselves. The author, of course, does not affect originality in the design or execution of his work, but he has expended great care and labour in digesting and arranging the numerous subjects of legislative enactment to which we have alluded, and has collected in notes the decisions relating to them. So that the labour which he has expended himself will relieve others, whose duty it may be to make themselves acquainted with the law on these subjects, from searching into the different statutes, and picking out the provisions which they are desirous of being acquainted with.

The book contains a very full and comprehensive index, and will, we believe, be found a very useful publication to all persons interested, either officially or privately, in the matters of which it treats.

### Court Papers.

#### EQUITY SITTINGS, EASTER TERM, 1865.

##### *Before the LORD CHANCELLOR.*

##### *At Lincoln's Inn.*

Wednesday, April 19	{ Appeal Motions and Appeals in Bankruptcy.
Thursday .....	20 Petitions and Appeals.
Friday .....	21 Appeals.
Saturday .....	22 Appeals in Bankruptcy and Appeals.
Monday .....	24 { Appeals.
Tuesday .....	25 { Appeals.
Wednesday .....	26 Appeals in Bankruptcy and Appeals.
Thursday .....	27 Appeal Motions and Appeals.
Friday .....	28 Appeals.
Saturday .....	29 Appeals in Bankruptcy and Appeals.
Monday .... May 1	{ Appeals.
Tuesday .....	2 { Appeals.
Wednesday .....	3 Appeals in Bankruptcy and Appeals.
Thursday .....	4 Appeal Motions and Appeals.
Friday .....	5 Appeals.
Saturday .....	6 Appeals in Bankruptcy and Appeals.
Monday .....	8 { Appeals.
Tuesday .....	9 { Appeals.
Wednesday .... 10	{ Petitions, Appeals in Bankruptcy, and Appeals.
Thursday .....	11 Appeal Motions and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

##### *Before the LORDS JUSTICES.*

##### *At Lincoln's Inn.*

Wednesday, April 19	Appeal Motions.
Thursday .....	20 Appeal Motions and Appeals.
Friday .....	21 { Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	22 Appeals.
Monday .....	24 { Appeals.
Tuesday .....	25 { Appeals from the County Palatine of Lancaster and Appeals.
Wednesday .....	26 Appeals.
Thursday .....	27 Appeal Motions and Appeals.
Friday .....	28 { Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	29 { Appeals.
Monday .... May 1	{ Appeals.
Tuesday .....	2 { Appeals.
Wednesday .....	3 { Appeals.
Thursday .....	4 Appeal Motions and Appeals.
Friday .....	5 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday .....	6 { Appeals.
Monday .....	8 { Appeals.
Tuesday .....	9 { Appeals.
Wednesday .....	10 { Appeals.
Thursday .....	11 Appeal Motions and Appeals.

*Notice.*—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

##### *Before the MASTER OF THE ROLLS.*

##### *At Chancery-lane.*

Wednesday, April 19	Motions.
Thursday .....	20 { General Paper.
Friday .....	21 { General Paper.
Saturday .....	22 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	24 { General Paper.
Tuesday .....	25 { General Paper.
Wednesday .....	26 { General Paper.
Thursday .....	27 Motions and General Paper.
Friday .....	28 General Paper.
Saturday .....	29 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .... May 1	{ General Paper.
Tuesday .....	2 { General Paper.
Wednesday .....	3 { General Paper.
Thursday .....	4 Motions and General Paper.
Friday .....	5 General Paper.
Saturday .....	6 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	8 { General Paper.
Tuesday .....	9 { General Paper.
Wednesday .... 10	{ General Paper.
Thursday .....	11 Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

##### *Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

##### *At Lincoln's Inn.*

Wednesday, April 19	Motions.
Thursday .....	20 General Paper.
Friday .....	21 { Petitions, Adjourned Summonses, and General Paper.
Saturday .....	22 Short Causes, Adjourned Summonses, and General Paper.
Monday .....	24 { General Paper.
Tuesday .....	25 { General Paper.
Wednesday .... 26	{ General Paper.
Thursday .....	27 Motions, Adjourned Summonses, and General Paper.
Friday .....	28 Petitions, Adjourned Summonses, and General Paper.
Saturday .....	29 Short Causes, Adjourned Summonses, and General Paper.
Monday .... May 1	{ General Paper.
Tuesday .....	2 { General Paper.
Wednesday .....	3 { General Paper.
Thursday .....	4 Motions, Adjourned Summonses, and General Paper.
Friday .....	5 Petitions, Adjourned Summonses, and General Paper.
Saturday .....	6 Short Causes, Adjourned Summonses, and General Paper.
Monday .....	8 { General Paper.
Tuesday .....	9 { General Paper.
Wednesday .... 10	{ General Paper.
Thursday .....	11 { Motions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART*

*At Lincoln's Inn.*

Wednesday, April 19	No Sitting.
Thursday .....	20 Motions and Causes.
Friday .....	21 Petitions and Causes.
Saturday .....	22 Short Causes and Causes.
Monday .....	24 } Causes.
Tuesday .....	25 }
Wednesday .....	26 }
Thursday .....	27 Motions and Causes.
Friday .....	28 Petitions and Causes.
Saturday .....	29 Short Causes and Causes.
Monday .... May 1	1 } Causes.
Tuesday .....	2 }
Wednesday .....	3 }
Thursday .....	4 Motions and Causes.
Friday .....	5 Petitions and Causes.
Saturday .....	6 Short Causes and Causes.
Monday .....	8 }
Tuesday .....	9 } Causes.
Wednesday .....	10 }
Thursday .....	11 Motions and Causes.

N.B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.*

*At Lincoln's Inn.*

Wednesday, April 19	Motions.
Thursday .....	20 } General Paper.
Friday .....	21 }
Saturday .....	22 } Petitions, Short Causes, and General Paper.
Monday .....	24 }
Tuesday .....	25 } General Paper.
Wednesday .....	26 }
Thursday .....	27 Motions and General Paper.
Friday .....	28 General Paper.
Saturday .....	29 } Petitions, Short Causes, and General Paper.
Monday .... May 1	1 } General Paper.
Tuesday .....	2 }
Wednesday .....	3 }
Thursday .....	4 Motions and General Paper.
Friday .....	5 General Paper.
Saturday .....	6 } Petitions, Short Causes, and General Paper.
Monday .....	8 }
Tuesday .....	9 } General Paper.
Wednesday .....	10 }
Thursday .....	11 Motions and General Paper.

N.B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

**Imperial Parliament.**

**HOUSE OF LORDS.—Monday, March 20.**

**THE NEW COURTS OF JUSTICE.**

Earl Stanhope said it was, in his opinion, expedient that the plans and estimates for the proposed building should be laid on the table with the least possible delay, so that their Lordships might have time carefully to consider them. He could not understand on what ground the superior advantages presented by the Thames Embankment had been disregarded. He would beg their Lordships to consider for a moment how noble a situation it would be in an architectural point of view. If a building were constructed such as the importance of the occasion demanded, and that it rested on the banks of the river, with Somerset House on the one side, and the Temple

on the other, it would possess a river front of a beauty with which not many other river sites in Europe could advantageously compare. But if, on the contrary, the new courts were erected where a block of houses now stood, surrounded by other blocks of houses, the building, whatever its architectural beauty might be, would by no means present so imposing an appearance. He was extremely anxious that the error which had been committed in the case of St. Paul's should now be avoided. The site on the banks of the Thames would, for many reasons, be very convenient. It would have the great advantage of making the new courts accessible by means of water communication, which afforded great facilities in a city whose thoroughfares were crowded to such an extent as greatly to impede the movement of its traffic.

The Lord Chancellor said that no architect has been appointed to devise plans for the building of the courts of justice, or even been thought of for such an office, but there was in the bill a provision for the appointment of a commission to superintend all the architectural plans and details, the constitution of which commission would deserve the very serious attention of the Government. The noble earl had adopted a very inconvenient course in raising the discussion at the present moment. The second reading of the bill, relating to the financial part of this plan, had been postponed, because the other bill, which relates to the site, has not left the House of Commons; and all the evidence which had been or might be taken by the committee of that House upon the question of site should, with the report of that committee, be laid upon their Lordships' table. The case with respect to the embankment would be found to be this:—The portion of the embankment, which some persons had thought might be appropriated as a site for the courts of justice, lay between the eastern extremity of Somerset House and the Temple. Supposing these new buildings to be ranged in a line with the façade of Somerset House; and if they were not, they would be a great architectural deformity; they would only extend for a very few feet upon the embankment itself, and then all the rest of the seven acres and a half which would be absolutely required for the site of the new courts could be obtained only by purchasing at a very great expense a number of houses occupying the southern parts of several streets belonging to the Duke of Norfolk, the acquisition of which would cost a considerably larger sum than that which would be required for the purchase of the Carey-street site. Greater accommodation will be afforded to suitors in the courts, and economy obtained. That could only be accomplished by choosing a site in the immediate neighbourhood of the offices of solicitors, the chambers of barristers, and all those additions to courts of justice which had grown up and were established in that neighbourhood, and which could not be had upon the Thames Embankment. There were no plans for the building of the proposed courts. Those plans must be the subject of consideration by the commission which is to be appointed. As to the site, a very good plan was deposited in the Private Bill-office.

The Earl of Harrowby said, that although the site selected might have been the best that could be found thirty-five years ago, the construction of the Thames Embankment had rendered proper a reconsideration of the question. Viewed with reference to architectural advantages, there could be no comparison between the two sites. That selected by the Government was situated in one of the most crowded parts of the metropolis, and was entirely wanting in good means of access. The best access was by the Strand, but that was often blocked up; and on the other side there was no direct approach to Lincoln's-Inn-fields, except Queen-street, which was at one part very narrow. All the other approaches were mere crooked passages. It would be necessary, therefore, to add to the cost of erecting these buildings the expense which must be incurred in making suitable approaches to them.

The Earl of Longford said, that a plan for the Thames Embankment, submitted by Mr. Newton, proposed to range along that work the whole of the new public buildings of the metropolis. Ready access would then have been obtained to them all, while the inconvenience arising from their present position was so great, that he felt sure such a plan must be eventually adopted.

Lord Redesdale expressed his regret at the decision that the courts were to be removed from Westminster. It had been the opinion of lawyers of days gone by that the distance between their chambers and Westminster conduced to the

more careful study of the law; and Lord Lyndhurst often expressed his regret at the prospect of the removal of the courts to a more central position. It was said that the locality they at present occupied was inconvenient on account of its distance from their chambers; but it was a strange thing, if any inconvenience had been felt, that during the last few centuries the dwellings of the lawyers had not been concentrated at Westminster. He believed that the public were gainers by the members of the Legislature residing at some distance from the Houses of Parliament. He doubted the policy of giving an architect seven acres of ground upon which to build, as he would be sure to waste the ground, and make the building inconvenient. Their Lordships had often reason to complain of the unnecessary space which had been bestowed upon that House and its various offices. He also doubted the propriety of concentrating seventy-two courts of law under one roof. The character of the business of those various courts was totally different, and the counsel who attended them were not engaged in the same branches of the law. No doubt the superior courts might be advantageously concentrated, and the inferior courts might also be brought together; but there was no necessity for placing both the superior and the inferior courts under one roof. Another point of great importance was, that by the proposed change their Lordships' House of Appeal would be the only court sitting in that quarter, and it would at some future time be alleged, as a reason for altering their jurisdiction, that it was inconvenient to attend a place so far removed from the other courts of law. He trusted their Lordships would never contemplate the possibility of giving up their jurisdiction as a court of appeal. Therefore, this was a matter which ought to be considered in sanctioning the contemplated removal of the law courts. He believed ample room might be found in that locality for the new courts, provided a moderate space only were assigned for them. There was an excellent site on the other side of Bridge-street, which required improvement, and this he suggested would be just the spot for the erection of the new courts.

#### HOUSE OF COMMONS.—Wednesday, March 22.

##### CRIMINAL CASES EVIDENCE BILL.

Mr. Scully consented to the postponement of the second reading of this bill until Monday next.

#### BILLS IN PROGRESS.

*A Bill to abolish Arrest upon Final Process in England, and for the Amendment of the Law of Bankruptcy in certain Particulars.*

[The Lord Chancellor.]

Sect. 1. From and after the commencement of this act no person shall be taken or charged in execution or detained upon any judgment, decree, or order obtained or made in any of her Majesty's superior courts, or in any inferior court in England, for the payment of any sum of money, or damages, or costs: provided always, that this act shall not affect the remedies given to creditors under the 8 & 9 Vict. c. 127, intitled "An Act for the better securing the Payment of Small Debts," or under the 9 & 10 Vict. c. 95, intitled "An Act for the more easy Recovery of Small Debts and Demands in England."

2. The remedies given to judgment creditors by sects. 76 to 85, both inclusive, of the Bankruptcy Act, 1861, shall extend and be applicable to the case of every judgment creditor who would have been entitled to sue out against a debtor a writ of *capias ad satisfaciendum*, or to charge the debtor in execution in respect of any debt amounting to 20*l.*, exclusive of costs, if this act had not passed.

3. The debt of a judgment creditor for 20*l.*, exclusive of costs, petitioning for adjudication of bankruptcy against a debtor, shall be a good petitioning creditor's debt, and sufficient for the purposes of such adjudication.

4. Sects. 98 to 107 of the Bankruptcy Act, 1861, inclusive, are hereby repealed; but such repeal shall not affect any proceeding pending, or any right that has arisen or may arise in respect of any transaction, act, matter, or thing done under or by virtue of any such sections.

5. No order of discharge in any bankruptcy shall be granted, nor shall the same if granted protect any estate, property, income, or salary which a bankrupt may acquire, possess, or become entitled to, after the date of such order of discharge, unless the estate of the bankrupt shall have paid, or shall be sufficient to pay, in bankruptcy, a dividend or dividends of 5*s.* in the pound upon all the debts proved in such bankruptcy, or unless creditors who have proved, and whose debts are equal to three-fourths of the whole amount of the debts proved, shall, by writing under their hands, consent to such order of discharge: provided always, that nothing herein contained shall affect any power now vested in the commissioners of the Court of Bankruptcy and judges of the county courts of refusing, suspending, or annexing conditions to any order of discharge.

6. This act shall apply only to England.

7. This act shall be cited for all purposes as "The Abolition of Arrest Act, 1865."

8. This act shall commence and take effect on the 20th June next.

*A Bill to enable the Benchers of the Inns of Court to appoint Judicial Committees in certain Cases, and to give the necessary Powers to such Committees.*

[Sir George Bowyer and Mr. Hennessy.]

Sect. 1. That whenever any charge or complaint connected with or affecting the practice and the duties or the honour of the legal profession shall be made against any barrister to the benchers of the inn of court in England of which he is a member, and also whenever the benchers of any of the four inns of court shall deem it necessary or expedient for the honour and credit of the legal profession to inquire into the conduct of any barrister or other member of their inn, and also whenever any objection to the call to the bar of any student shall be made to the benchers of the inn of court to which such student belongs, or to the admission as a student of any person, in every such case it shall be lawful for such benchers, if they shall think fit, to elect from their own body five benchers to constitute a judicial committee to hear and determine such charge or complaint, or such matter of inquiry, or such objection as aforesaid.

2. It shall be lawful for any such judicial committees elected as aforesaid, and they are hereby required, in every such case, to hear and determine every such charge or complaint, or such matter of inquiry, and every such objection as aforesaid; and such judicial committee shall have the power to disbar any barrister, or to expel from the inn any barrister or other member of such inn whom such committee shall find guilty of any offence deserving such punishment, or to suspend any such barrister or other member of the inn from practice for any time that they shall think proper; and also such committee shall have power to hear and determine any objection made to the call to the bar of any student as aforesaid, or to the admission of any person as a student.

3. No barrister shall be disbarred or suspended from practice, no barrister or other member of any inn shall be expelled from such inn, and no student shall be refused to be called to the bar, and no person shall be refused admission as a student to any inn of court, except by decision of a judicial committee elected under the provisions of this act.

4. It shall be lawful for any barrister or other member of any inn of court against whom any charge or complaint shall be brought before, or whose conduct shall be inquired into by any such judicial committee, or any person whose call or admission shall be objected to as aforesaid, to challenge any of the members of such judicial committee not exceeding three, and the benchers of the inn of court by whom such committee was elected shall thereupon choose some other benchers of such inn of court to hear and determine such charge, or complaint, or objection in the place of the member or members so challenged.

5. In every case within the provisions of this act an appeal shall lie from such judicial committee to the judges of the superior courts of common law, that is to say, the Courts of Queen's Bench, Common Pleas, and Exchequer.

6. It shall be lawful for the judges of the said superior courts of common law, or any five of them, from time to time to frame, alter, and amend rules and regulations for the election of such judicial committees, and for the procedure of such judicial committees, and of appeals from their decisions.

7. Such judicial committees as aforesaid, and the judges hearing any appeal therefrom, shall in all cases sit in open court, unless all parties to the case shall agree that such case shall be heard in private, and the judgments of such judicial committees and of the judges on appeal respectively shall be in writing, stating the reasons on which such judgments are grounded.

8. The said judicial committees, and the judges sitting on appeal therefrom, shall have all the powers of compelling the attendance of witnesses and the production of papers and documents, and of punishing for contempts, and all other the powers which by law belong to a court of record, and also the power of administering an oath or affirmation, as the case may be, to any witness appearing before them.

9. Any person examined before any such judicial committee or before the judges on appeal therefrom, who shall wilfully give false evidence, shall be liable to the penalties of perjury.

#### GENERAL EXAMINATION.—TRINITY TERM, 1865.

THE Council of Legal Education have approved of the following rules for the public examination of the students.

The attention of the students is requested to the following rules of the Inns of Court:—

"As an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each, and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination; and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto."

"At every call to the Bar those students who have passed a general examination, and either obtained a studentship, an exhibition, or a certificate of honour at such examination, shall take rank in seniority over all other students who shall be called on the same day."

#### RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Trinity Term, to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship, an exhibition, or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Monday, the 15th day of May next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Monday, the 22nd day of May next, and will be continued on the Tuesday and Wednesday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Monday morning, the 22nd May, at half-past nine, on Constitutional Law and Legal History; in the afternoon, at half-past one, on Equity.

Tuesday morning, the 23rd May, at half-past nine, on Common Law; in the afternoon, at half-past one, on the Law of Real Property, &c.

Wednesday morning, the 24th May, at half-past nine, on Jurisprudence and the Civil Law; in the afternoon, at half-past one, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Wednesday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the student is a candidate for honours, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

THE READER ON CONSTITUTIONAL LAW AND LEGAL HISTORY will expect the candidates for honours to be well acquainted with the origin and progress of our Laws and Constitution, as explained in chap. 8, part 3, of Hallam's History of the Middle Ages.

He will expect them to be well acquainted with the reign of Richard II, and with the chapters in Hallam's Constitutional History which comprise the reigns from the accession of Henry VII to the death of Anne; with the Trials of persons eminent in our history, or otherwise important, from the accession of Elizabeth to the year 1760; with the History of the Law of Treason and the Law of Libel.

All candidates will be required to know the chief events in English History from the Conquest to the year 1796; to have an accurate knowledge of the reigns of the Stuart Kings, of the Trials of Vane, Sidney, Russell, College, Mrs. Gaunt, and Lady Lisle; to be thoroughly acquainted with the provisions of Magna Charta, the Bill of Rights, the Act of Settlement, the Habeas Corpus Acts, and the Toleration Act.

THE READER ON EQUITY proposes to examine in the following books:—

1. Haynes's Outlines of Equity; Smith's Manual of

Equity Jurisprudence; Hunter's Elementary View of the Proceedings in a Suit in Equity, part 1.

2. The Cases and Notes contained in the 1st volume of White & Tudor's Leading Cases; the Act to further amend the Law of Property and to relieve Trustees, 22 & 23 Vict. c. 35; the Act to further amend the Law of Property, 23 & 24 Vict. c. 38; the Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, 23 & 24 Vict. c. 145; the Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of Lancaster, 25 & 26 Vict. c. 42; the General Orders of the Court of Chancery of the 1st February, 1861, and of the 5th February, 1861 (7 Jur., N. S., part 2, p. 58); Mitford on Pleadings in the Court of Chancery—Introduction, c. 1, ss. 1, 2; c. 1, s. 3 (the first six pages); c. 2, s. 1; c. 2, s. 2, part 1 (the first three pages); c. 2, s. 2, part 2 (the first two pages); c. 2, s. 2, part 3; c. 3.

Candidates for certificates of having passed a satisfactory examination will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for a studentship, exhibition, or honours will be examined in the books mentioned in the two classes.

The READER on the LAW OF REAL PROPERTY, &c., proposes to examine in the following books and subjects:—

1. Joshua Williams on the Law of Real Property, 6th ed.

2. Powers—Josiah Wm. Smith on Real and Personal Property, 3rd ed., pp. 339–357, 723–748.

3. Joint Tenancy, and Tenancy in Common.—*Morley v. Bird* (3 Ves. 629), and the notes to that case in Tudor's Leading Cases in Conveyancing, 2nd ed., pp. 778–802.

4. Gifts to Classes—*Viner v. Francis* (2 Cox, 190); *Wild's case* (6 Rep. 16 b); and the notes to those cases in Tudor's Leading Cases in Conveyancing, 702, 581; and Hayes & Jarman's Concise Wills, 6th ed., by Eastwood, pp. 210–214.

5. Sanders on Uses, 5th ed., by Sanders & Warner, c. 2, pp. 83–276.

Candidates for the studentship, exhibition, or honours will be examined in all the foregoing books and subjects; candidates for a certificate in those under heads 1, 2, and 3.

The READER on JURISPRUDENCE, the CIVIL LAW, and INTERNATIONAL LAW proposes to examine in the following books and subjects:—

1. Justinian's Institutes, book 3, tit. 1–23, with the Notes of Ortolan or Sandars.

2. Justiniana—Novella, 118; Justiniana—Novella, 127.

3. Mackeldeii—Systema Juris Romani hodie Usitati—Pars Specialis, lib. 4, § 2, c. 1; De Successione ab Intestato, § 615–622; lib. 2, § 2, c. 1, § 353–442.

4. Code Napoleon, livre 3, tit. 1, art. 718–814.

5. Wheaton's Elements of International Law (ed. 1863), part 4, c. 3—"Rights of War as to Neutrals," art. 19–32, pp. 736–858.

6. Maine's Ancient Law, c. 7, p. 215.

Candidates for honours will be examined in all the above subjects; but candidates for a pass certificate will be examined in 1, 5, and 6 only.

The READER on COMMON LAW proposes to examine in the following books and subjects:—

Candidates for a pass certificate will be examined in—

1. The ordinary Steps and Course of Pleading in an Action.

2. Broom's Commentaries (3rd ed.), book 1, c. 3—

"Nature of Rights enforceable by Action;" book 2, c. 1—"Of Contracts generally;" book 3, c. 1—"Of Torts generally."

3. Smith on Contracts (last ed.), lect. 1–5 inclusive.

4. The Criminal Law Consolidation and Amendment Acts (by Greaves), so far as they relate to the undermentioned offences:—Murder and Manslaughter, Simple Larceny, Embezzlement, and False Pretences.

Candidates for the studentship, exhibition, or honours will be examined in the above-named books and subjects, and also in—

5. Story on Bailments (last ed.), cc. 1 and 2, and c. 6, art. 8 (so far as it concerns land carriers), with which should be read the Carriers Act (11 Geo. 4 & 1 Will. 4, c. 68).

6. The following cases:—*Backhouse v. Bonomi* (9 H. L. C. 503); *Chasemore v. Richards* (7 H. L. C. 349); *Hooper v. Lane* (6 H. L. C. 443); and *Emmens v. Elderton* (4 H. L. C. 624).

7. Smith's Mercantile Law (last ed.), book 1, cc. 4, 5—"Of Corporations, and Principal and Agent."

8. Taylor on Evidence (4th ed.), book 1, c. 5—"Presumptive Evidence."

By order of the Council,

WESTBURY, C., Chairman.

Council Chamber, Lincoln's Inn,

March 15, 1865.

## PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Trinity Educational Term, by the several Readers appointed by the Inns of Court.

### CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader, after dwelling on the reign of Elizabeth, will trace the History of our Constitution from the reign of Charles the First to the reign of Anne.

He will illustrate the history of each reign by references to the Statutes, the State Trials, the Reports, and the Debates in Parliament.

The books to which he will usually refer are:—Blackstone's Commentaries, by Kerr—Rapin's History—Clarendon's History—May's History—Burnet's Memoirs—Hallam's Constitutional History—Somers's Tracts—State Tracts—Ralph's History—Millar's History—Brodie's History—Parliamentary History.

In his Private Classes he will pursue the same plan from the reign of Mary downwards, and, if time allows, will return to the earlier period of our History.

### EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

#### An Elementary Course.

1. On the Relief afforded in Equity against the consequences of Mistake (continued).

2. On the Jurisdiction of the Court of Chancery in Matters of Account.

3. On Equitable Set-off and the Appropriation of Payments.

#### An Advanced Course.

1. On the Equitable Doctrine of Election (continued).

2. On Contracts of Suretyship, and the Equitable Rights to which they give rise.

In the Elementary Private Class, the subjects discussed will be—The Rules for determining the Priority of Charges on Real and Personal Property—The Law of Partnership as modified by Courts of Equity.

In the Advanced Private Class, the Lectures will

comprehend—The Administration of Real Assets, and the Principles of Equity Pleading (continued), and Relief on the ground of actual fraud.

### THE LAW OF REAL PROPERTY, &c.

The Reader on the Law of Real Property, &c. proposes to deliver, in the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

#### *Elementary Course.*

1. The Law of Mortmain and Charitable Uses, in continuation and conclusion of the last Term's Lectures on this subject.

2. The Law relating to Land of Copyhold Tenure.

#### *Advanced Course.*

1. The Law of Prescription.

2. The Law of Fire Insurance.

In his Private Classes, the Reader will, with the Elementary Class, continue his Course of Real Property Law, using the work of Mr. Joshua Williams as a Text-book; and with the Advanced Class, the Reader will complete the perusal of Mr. Sandars's work on Uses and Trusts.

### JURISPRUDENCE, THE CIVIL LAW, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, the Civil Law, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures upon the following subjects:—

1. The Historical Development of the Roman Law of Contract.

2. The Comparative Jurisprudence of Rome, England, and France, with respect to the Contract of Sale.

3. The Roman Law relating to the Warranty of the Vendor against Eviction, and also against Latent Defects in the Property sold.

4. The Rules of Modern International Law relating to Neutral Trade with an Enemy, and Contraband of War.

In his Private Class, the Reader proposes to continue the Course of Roman Civil Law upon Contracts, using Sandars's Edition of Justinian's Institutes, and the Systema Juris Romani of Mackelvey as Text-books.

The Reader in his Private Class will also discuss points of International Law as to the Commencement of the War, and its immediate Effects; and also Rights of War as between Enemies, using the Treatise of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the cases under discussion.

### COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses of Six Public Lectures each, on the following subjects:—

#### *Elementary Course.*

1. A Comparison will be instituted between the Ingredients in a Crime and those in a Cause of Action on Contract or on Tort.

2. The Origin and Jurisdiction of our Criminal Courts will be investigated.

3. Criminal Procedure will be exemplified by reference to—

(1). The Proceedings before a Magistrate on a Criminal Charge.

(2). The Trial at Quarter Sessions, or at the Assizes, of a Person charged with an Indictable Offence.

In treating the above Subjects, Rules of Evidence will especially be noticed.

#### *Advanced Course.*

1. The Nature of and Ingredients in an Indictable Offence.

2. The Structure and Office of an Indictment, with a Specification of the Pleas available in Criminal Cases.

3. Ordinary Offences against the Person or Property.

4. Points connected with the Law of Evidence in relation to Criminal Proceedings.

With his Private Class, the Reader will examine in detail the foregoing subjects, referring to the under-mentioned Books:—

Elementary Class:—Broom's Commentaries (last edition); Paley on Convictions; Archbold's Criminal Pleading, by Welsby.

Advanced Class:—The Criminal Law Consolidation and Amendment Acts (edited by Greaves); Roscoe's Digest of Evidence in Criminal Cases; Taylor on Evidence (last edition).

### EXAMINATION ON THE SUBJECTS OF LECTURES AND CLASSES.

The Examinations for Exhibitions on the Subjects of Lectures and Classes delivered in the three Educational Terms, 1864-5, will commence on Monday, the 3rd July, at Lincoln's Inn Hall.

Students who propose offering themselves for Examination must enter their names on or before Thursday, the 1st June next, at the Steward's Office, Lincoln's Inn; and a Reader's Certificate of having duly attended the Lectures and Classes, on the Subjects in which a Student offers himself for Examination, must be sent to the Council of Legal Education, at Lincoln's Inn, on or before Monday, the 19th June.

Students, having duly attended the Lectures and Classes of one or more of the Readers, are qualified to enter for Examination on such Subjects, but they are not allowed to enter for the Elementary and Advanced Examination on the same Subject, and provided that the Terms they have kept do not exceed the limits prescribed by clause 59 of the Consolidated Regulations of the Inns of Court.

The Examinations for the Exhibitions will be partly oral and partly in writing, by means of printed papers of questions.

*The following Days and Hours have been set apart for the said Examination:—*

Monday Morning, the 4th July, from 9:30 to 12:30—Constitutional Law and Legal History.

Monday Afternoon, the 4th July, from 1:30 to 4:30—Jurisprudence, Civil, and International Law.

Tuesday Morning, the 5th July, from 9:30 to 12:30—On Equity.

Tuesday Afternoon, the 5th July, from 1:30 to 4:30—On the Common Law.

Wednesday Morning, the 6th July, from 9:30 to 12:30—The Law of Real Property; and

Wednesday Afternoon, the 6th July, from 1:30 to 4:30—A Paper composed of Three Questions on each of the foregoing Subjects of Examination.

By order of the Council,

(Signed) WESTBURY, C., Chairman.

Mr. Charles Manley Smith, of the Midland Circuit (author of the well-known Treatise on the Law of Master and Servant, and editor of the last two editions of Sir Wm. Hodges' Treatise on the Law of Railways), has been appointed one of the Masters of the Court of Queen's Bench, in the place of Sir Archer Denman Croft, deceased. The appointment has given general satisfaction.



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# THE JURIST.

LONDON, APRIL 1, 1866.

In a former article (vide supra, p. 75) we called the attention of our readers to some of the late decisions in the Court of Common Pleas, on appeals from the revising barristers in last Michaelmas Term. We reviewed some of the cases, and endeavoured to point out the important features of these decisions. It may be, perhaps, profitable to glance at such of the remaining cases as involve important principles in registration law, and which our space then compelled us to forego. The case of *Heelis, App., Blain, Resp.* (11 Jur., N. S., part 1, p. 18), turned on the construction to be put on the words "actual possession," as used in the 26th section of the Reform Act. It was a claim to the county franchise by the owner of a rent-charge. The 2 & 3 Will. 4, c. 45, by sect. 26, provides, "That no person shall be entitled to vote in the election of a knight of the shire to serve in any future Parliament unless he shall have been duly registered," &c., and that "no person shall be so registered in any year in respect of his estate or interest in any lands or tenements, &c., unless he shall have been in the *actual possession* thereof, or in the receipt of the rents and profits thereof, for his own use, for six calendar months at least next previous to the last day of July in such year." The claimant was the owner of a rent-charge, and derived title as follows:—By indenture of the 3rd November, 1862, a rent-charge of 50*l.* per annum was conveyed to one Stephen Heelis, his heirs and assigns, for ever. By indenture of the 29th January, 1864, made between Stephen Heelis of the first part, John Heelis of the second part, and the five sons of the said Stephen Heelis of the third part, the said rent-charge was granted to John Heelis and his heirs, to the use of the five sons of Stephen Heelis, their heirs and assigns, for ever, as tenants in common. The claimant was one of the five sons of Stephen Heelis. The half-year's rent became due, and was paid in June, 1864, and was the first rent which accrued after the deed of the 29th January. At common law the claimant would not have been in possession of the rent-charge until payment of some portion of the rent-charge. But it was contended, that the stat. 27 Hen. 8, c. 10, gave the cestui que use actual possession immediately on the execution of the deed creating the use. That statute provides, "that where any person or persons stand or be seised of any manors, lands, tenements, rents and profits, &c., to the use, confidence, or trust of any other person or persons, by reason of any bargain, sale, contract, agreement, &c., or otherwise, that in any such case all and every such person or persons, &c. that have any such use, confidence, or trust, shall from henceforth stand and be seised, deemed, and adjudged in lawful seisin, estate, and possession of and in the same manors, lands, tenements, rents, and profits, &c., to all intents and purposes of law." It was argued ably and successfully for the

appellant, the claimant, by Mr. Joshua Williams, that the Statute of Uses intended and did pass the "actual possession" to the cestui que use immediately on the execution of the deed creating the use. It was contended on behalf of the respondent, the objector, that there could not be an *actual possession*, such as was intended by the Legislature in sect. 26 of the Reform Act, until the receipt of some portion of the rent-charge; but the Court held, that the statute gave the actual possession to the cestui que use immediately on the execution of the instrument creating the use, and that the "actual possession" intended by the Legislature in the Reform Act, was such a possession as was conferred on the cestui que use by the Statute of Uses. The next important appeal, *Smith, App., Foreman, Resp.* (11 Jur., N. S., part 1, p. 42), was a claim to the county franchise by an alleged occupier of premises of the annual value of 50*l.*, under a franchise conferred by the 20th section of the Reform Act. The facts as stated were as follows:—The claimant had occupied a house and land of the annual value of 40*l.* above all charges during the qualifying period, and he had also occupied under the same landlord jointly with his (the claimant's) father, a house and land in the same election district, of the annual value of 64*l.* above all charges, and it was contended that the claimant was entitled, by virtue of the Registration Act, 6 Vict. c. 18, s. 73, to tack these two holdings together, and so make up an occupation of a sufficient annual value to confer a vote. Now, the 73rd section of the 6 Vict. c. 78, relied on for the claimant, provides, "That where any lands and tenements shall be jointly rented and occupied by more persons than one, each of such joint occupiers shall be entitled to be registered, and vote in an election, in respect of the lands and tenements so jointly rented and occupied, in case the yearly rent for which they shall be *bonâ fide* liable in respect of such lands and tenements shall be of an amount which, when divided by the number of such occupants, shall give a *bonâ fide* rent of 50*l.* for each and every such occupier, but not otherwise." It was said, on behalf of the objector, that if the statute intended to permit occupiers to tack several occupations, it would have said "a yearly rent or rents;" and reference was made to the judgment of Chief Justice Tindal, in *Gadsby, App., Barrow, Resp.* (1 Lutw. Reg. Cas. 142), where that eminent judge makes the same observation on the construction of the statute. The Court, however, held, that the claimant could not tack these two holdings, so as to bring himself within the 20th section of the Reform Act in point of value. This is an important decision, and one which will govern a number of claims, and will probably exclude a large class of claimants. If the Court had decided that the claimant might tack his two holdings, then an occupier of any number of small holdings would be entitled to be registered, and to vote in the election of county members, provided the number of holdings together were of sufficient annual value. Such a decision would let in an entirely new class of voters to the county franchise. In our former article we referred to *Scott, App., Durant, Resp.* (11 Jur., N. S., part 1, p. 115), where it was held, that the formalities

in case of appeal required by the 42nd section of the Registration Act, cannot be dispensed with under any circumstances, or even waived by consent of the parties to the appeal. The two remaining appeals of importance were *Powell, App., Boraston, Resp.* (11 Jur., N. S., part 1, p. 160), and *Powell, App., Farmer, Resp.* (Id. 162). In both these cases the question turned on the meaning of the word "building" as used in the 27th section of the Reform Act. In the former of these, a building was erected on land occupied by the claimant by an electioneering agent. At the time of the demise of the land to the claimant there was no building on the land. The agent had no interest in the land occupied by the claimant, but, for election purposes, he caused to be erected on the land a shed made of boards nailed to posts let into the ground; and the claimant occupied this shed, and kept in it some agricultural implements. The Court held, and we are certainly not surprised at the decision, that this shed was not a "building" within the meaning of the words "or other building," as used in the 27th section of the Reform Act. The judgment of the Court, which was delivered by Chief Justice Erle, after consideration, is a long and learned discourse. In it he reviews the case of *Cook, App., Humber, Resp.* (11 C. B., N. S., 33), which is a leading case upon the four great heads of qualification,—"tenement, value, occupation, and estate." Both the judgment in the last-named case and in *Powell, App., Farmer, Resp.*, are worthy an attentive perusal, and amount, in fact, to a treatise on this most difficult subject. The Chief Justice also referred to *Watson, App., Cotton, Resp.* (5 C. B. 51), where it was held that the finding of the revising barrister is conclusive as to the facts, and where the amusing dictum of the late Mr. Justice Maule occurs, when he said—"The barrister describes two sides of 'building.' The rest may be of solid masonry." The fact being, that the barrister only described two sides, because there were only two sides. In the other appeal, *Powell, App., Farmer, Resp.*, the claimant was a market gardener, and occupied land in a borough. At the time of the demise there was no building on the land, but the claimant erected on the land at his own cost a structure supported by wooden posts let into the ground, having boarded sides and a thatched roof. The revising barrister held this structure to be a building within the meaning of the Reform Act, and the Court of Common Pleas upheld his decision. These last two appeals are amongst the most important of the registration cases of Michaelmas Term, 1864.

### Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—The recent judgment in the Privy Council, in the case of the Bishop of Natal, seems to be interpreted by many in a sense thus expressed by the *Saturday Review*:—"The letters-patent which gave them," the colonial bishops, "authority are null and void; but the fact, that they are appointed by the Crown, enables the Crown to restrain them from exercising any other kind of authority. The Crown

cannot give them legal jurisdiction; but, as they have accepted their appointment from it, it can and will prevent them from accepting a purely spiritual jurisdiction from any one else." Now, this is a view which, I believe, few lawyers who consider the judgment even in itself, and still fewer who consider it in connexion with the principles upheld in another case by the same high Court, will adopt.

There is no passage in the judgment which declares the patent, either of the Bishop of Cape Town or of the Bishop of Natal, to be null and void. "Let it be granted or assumed," say their Lordships, "that the letters-patent are sufficient in law to confer on Dr. Gray the ecclesiastical status of metropolitan, and to create between him and the Bishops of Natal and Grahams Town the personal relation of metropolitan and suffragan as ecclesiastics, yet it is quite clear that the Crown had no power to confer any jurisdiction, or coercive legal authority, upon the metropolitan over the suffragan bishops, or over any other person." And again—"There is, therefore, no power in the Crown to create any new or ecclesiastical tribunal or jurisdiction, and the clauses which purport to do so, contained in the letters-patent to the appellant and respondent, are simply void in law." The italics are my own, and they point out to what extent, and to what extent only, the patents of these bishops have been declared nullities.

But a further examination will shew that it is distinctly on the ground of the patents, and, therefore, on the supposition that they are not altogether nullities, that the judgment rests. "If, then," say their Lordships, "the Bishop of Cape Town had no jurisdiction by law, did he obtain any by contract or submission on the part of the Bishop of Natal? . . . Even if the parties intended to enter into any such agreement (of which, however, we find no trace), it was not legally competent to the Bishop of Natal to give, or to the Bishop of Cape Town to accept or exercise, any such jurisdiction." I apprehend that it is quite impossible for any one, who supposes the patents to have been treated as mere nullities, to reconcile this passage with the doctrine of the Judicial Committee in the case of *Long v. The Bishop of Cape Town*. Their Lordships said, in that case, "We think that the acts of Mr. Long must be construed with reference to the position in which he stood, as a clergyman of the Church of England, towards a lawfully appointed bishop of that Church, and to the authority known to belong to that office in England; and we are of opinion that, by taking the oath of canonical obedience to his lordship, and accepting from him a license to officiate and have the cure of souls within the parish of Mowbray, subject to revocation for just cause, and by accepting the appointment to the living of Mowbray under a deed, which expressly contemplated, as one means of avoidance, the removal of the incumbent for any lawful cause, Mr. Long did voluntarily submit himself to the authority of the bishop to such an extent as to enable the bishop to deprive him of his benefice for any lawful cause; that is, for such cause as (having regard to any differences which may arise from the circumstances of the colony) would authorise the deprivation of a clergyman by his bishop in England. We adopt the language of Mr. Justice Watermeyer, that, 'for the purpose of the contract between the plaintiff and the defendant, we are to take them as having contracted that the laws of the Church of England shall, though only as far as applicable here [that is, in the colony], govern both.'"

The blot in the Bishop of Cape Town's case was, that he had deprived Mr. Long for something which was not a sufficient cause of deprivation by the ecclesiastical law of England; the jurisdiction which he claimed

he possessed by contract. How, then, is this to be reconciled with the denial, by the Judicial Committee, not only of the actual, but also of the possible, existence of consensual jurisdiction over the Bishop of Natal?

The answer to the question is to be found in the opening passages of the recent judgment, which form the pivot it turns on; and yet have been strangely overlooked by those who have commented on it in the public press. "The Bishop of Natal and the Bishop of Cape Town (who are the parties to this proceeding) are ecclesiastical persons who have been created bishops by the Queen, in the exercise of her authority as sovereign of this realm and head of the Established Church. These bishops are consecrated, under mandate from the Queen, by the Archbishop of Canterbury, in the manner prescribed by the law of England. They received and hold their dioceses under grants made by the Crown. Their status, therefore, both ecclesiastical and temporal, must be ascertained and defined by the law of England; and it is plain that their legal existence depends on acts which have no validity or effect, except on the basis of the supremacy of the Crown. Further: their respective and relative rights and liabilities must be determined by the principles of English law, applied to the construction of the grants to them contained in the letters-patent; for they are the creatures of English law, and dependent on that law for their existence, rights, and attributes. *We must treat the parties before us as standing on this foundation, and on no other.*"

The whole of these sentences, and especially the last, which I have italicised, are decisive as to the reason why no consensual jurisdiction over the Bishop of Natal was held to be possible. Their Lordships take their stand on the principle, that a public functionary appointed by royal letters-patent, cannot, by his own private act, so modify the conditions of his office as to subject himself to deprivation in a way not pointed out by the law. They by no means intend to deny what in *Mr. Long's case* they asserted, that the incumbent of a benefice created by private liberality, and unknown to the law except by virtue of the trusts of its endowment, can subject himself to any conditions which may be consistent with those trusts. But this was a ground of decision incompatible with holding the patent to be null, the obvious effect of which would be to leave the so-called patentee free to contract any engagements he pleased. It follows, then, that their Lordships are still of the opinion expressed by them in the above extract from their judgment in *Long v. The Bishop of Cape Town*, namely, that the Bishop of Cape Town, and, by parity of reason, the Bishop of Natal also, is towards his clergy "a lawfully appointed bishop of the Church of England;" and that when, in the recent judgment, they "grant or assume" the sufficiency of the letters-patent to create personal relations, although the language is properly guarded, in order to avoid prejudicing a point not before them, yet it expresses their real sentiments. It was not competent, the Judicial Committee tells us, "to establish a metropolitan see or province, or to create an ecclesiastical corporation, whose status, rights, and authority the colony could be required to recognise;" but that does not affect the personal relations.

The clergy and laity who accept the Queen's bishops share in the order and liberty of the Church of this country. Suppose, for instance, that one of those clergymen, under the trusts of his endowment, similar to those of *Mr. Long's*, should be accused of heresy, which, on the principles of *Mr. Long's case*, would be a just cause of deprivation, he could claim the benefit of *The Gorham case*, the case of *Essays and Reviews*,

and all the other English authorities on the subject. To preserve this order and liberty for those of her people who desire it, and thereby serve the two indissoluble causes of truth and virtue, the head of the English Church has sent out bishops, on whom, as the Privy Council has now in effect held, the burthen of that high duty must lie till they are deprived of it by legal process, or freed from it by legal resignation. The members of that episcopal synod which has professed to set up a church of South Africa, not bound by the laws or authorities of the Church of England, if they should succeed in their object, will forfeit all authority over their clergy, either under the trusts of endowments given for the Church of England, or under oaths of obedience which, having been taken to public patent officers, were necessarily oaths of obedience according to the laws of the Church of England, and not further or otherwise. It is not here the place to discuss whether this would be a useful result for the good government and discipline of the South African dioceses; or whether it is moral and honest in those bishops to abjure the laws of the Church of England, without formally resigning their patents, and ceasing to insist on the oaths of obedience taken to them. The conscience has intricate windings, by which, no doubt, they justify their course to themselves; but, to an impartial mind, I apprehend that the two recent South African appeals have defined the Church of England in the colonies, as a body constituted by voluntary adhesion to bishops, lawfully appointed for the purpose, and whose own power of acting and contracting is, therefore, limited by the legal conditions of their tenure.

I am, Sir, yours respectfully,

JOHN WESTLAKE.

Lincoln's Inn, 30th March, 1865.

## Imperial Parliament.

### HOUSE OF LORDS.—Friday, March 24.

#### PRIVATE BILLS COSTS BILL.

Lord Houghton, in moving the second reading of this bill, which had come from the House of Commons, stated that the debatable part of it consisted of two clauses. The first of these provided, that when a committee of the House of Commons unanimously reported that the preamble of a bill was not proved, the opponents should be paid the costs of their opposition. He admitted that in this matter legislation came rather late, and that this was a case of shutting the stable door after a great many horses had been stolen. Innumerable vexatious had been caused to persons who had been compelled to petition against private bills, especially against railway bills, and of these hardships, no doubt, some of their Lordships had been the victims. There was in the House of Commons at the present moment a very strong feeling against allowing a bill which had once been rejected to go to a second reading—an objection which was recently very strongly manifested in the case of the contest between the Great Northern and Great Eastern Railway Companies. That feeling had, no doubt, mainly arisen from the want of a measure of this kind, because if this bill became law, those who introduced vexatious bills, and put either landowners or companies to expense, would themselves be losers. The second clause enacted, that when a committee unanimously reported that opposition had been unfounded, the promoters should recover costs. This part of the bill would require serious consideration in committee, because it was possible that there might be cases in which private individuals would suffer severely from coming into collision with powerful companies. He did not, however, look upon that as a very immediate danger, because he contemplated that this bill would act rather by exciting fear, and preventing the evils against which it was directed, than by active operation for their remedy. All the questions which would arise were rather matters for discussion in committee—when it would, he

thought, be desirable to insert a clause extending the operation of the bill to committees of their Lordships' House—than for debate upon this stage of the measure; and, therefore, without further observations, he moved that the bill should be read a second time.

Lord *Redesdale* said that he entirely approved the principle of the bill, and rejoiced that it had passed through the House of Commons, because in former times the objection which was generally raised to the proposal of such a measure was, that it would never receive the sanction of that House. He concurred with the noble Lord who had charge of the bill in desiring that its operation should be extended to committees of their Lordships' House, and suggested that another amendment would also be required. As the measure was now drawn, costs could not be recovered from the promoters of a bill, unless the preamble was unanimously rejected by the committee. That was a reasonable arrangement as far as public companies were concerned; but as private individuals seldom opposed the whole bill, the same argument did not apply to them. He thought that if a petitioner shewed that his right had been wantonly interfered with, and obtained a protecting clause, he ought to have his costs.

The Lord Chancellor said that he entirely concurred with the noble chairman of committees, and he should be happy to communicate with the noble Lord who had moved the second reading of the bill, and assist him in preparing a clause, which should extend the operation of the measure in the manner which had been suggested.

After a few words from Lord *Houghton* in reply, The bill was read a second time.

The Felony and Misdemeanour Evidence and Practice Bill passed through committee without amendments.

*Monday, March 27.*

The Private Bills Costs Bill passed through committee, with amendments, extending the operation of the bill to the committees of this as well as of the other House of Parliament, and authorising the allowance of costs to individuals in cases in which, though the preamble of the bill may have been proved, some clauses shall have been inserted or omitted, in order to protect the interests of the petitioner.

*Tuesday, March 28.*

The Bankruptcy and Insolvency (Ireland) Act Amendment Bill was read a third time, and passed.

#### HOUSE OF COMMONS.—Friday, March 24.

##### THE MURDER AT SAFFRON HILL.

Mr. *Roebuck* asked the Secretary of State for the Home Department, whether he had seen any necessity for inquiring into the conduct of the police on the trial of *S. Pelizzoni* for murder; and if so, to what conclusion he had come on the subject. He put the question on the part of a very worthy gentleman, Mr. *Negretti*.

Sir *G. Grey* replied, that he had not found it necessary to institute any inquiry into the conduct of the police, for no facts had been laid before him to warrant an inquiry, but all the circumstances had been investigated before a judge. The facts of the case were well known. *Pelizzoni* was charged with murder, tried on that charge before Mr. Baron Martin, and found guilty, not on circumstantial evidence, but on the most direct evidence of several witnesses. Mr. Baron Martin, in reporting on that case, expressed his entire concurrence in the verdict, but at the same time stated that, though the facts justified the verdict of murder, the circumstances of the case were such as, in his opinion, did not require that the sentence of the law should be executed, and he suggested that the sentence should be commuted for some other minor punishment. The learned judge added that, as proceedings were to be taken against another man for the same offence, it would be well that any decision on the matter should be suspended until the nature of the evidence in the second case should be ascertained. The other man, *Gregorio*, was put on trial before Mr. Justice Byles, and was convicted of manslaughter, and he should have been glad to take that verdict as deciding the case, but, by a communication from Mr. Justice Byles, he was informed that that verdict was not satisfactory to the judge. He had thought it right to send the notes of the second trial to Mr. Baron Martin, and to ask his opinion

on the whole case. The learned judge had written a very detailed report of his opinion, and expressed his entire concurrence with Mr. Justice Byles's opinion, that the verdict in the second case was not satisfactory; adding, that the case required great consideration, as it was one of importance with regard to the criminal law. Under these circumstances, he had thought it his duty to submit all the papers to the law officers of the Crown, and, as there were two other cases against *Pelizzoni* for stabbing, he referred the question to the law officers whether, with all the facts before them, they were of opinion that there was sufficient evidence for putting *Pelizzoni* on his trial for the minor charge of stabbing. In consequence of the answer he had received, he had directed that *Pelizzoni* should be put on his trial at the next sessions for the minor charge of stabbing, and he hoped that the trial would have the result of clearing away any doubts on this subject.

*Tuesday, March 28.*

The Married Women's Property (Ireland) Bill passed through committee.

The House went into committee on the Mortgage Debentures Bill and the Land Debentures Bill, and immediately agreed to report progress.

#### BILL IN PROGRESS.

##### *Abstract of Land Debentures Bill, as amended by Select Committee.*

[Mr. Ayrton and Mr. Collins.]

Sect. 1. Act to be read with Transfer of Land Act.

2. Act to extend to England only.

3. Short title.

4. The right given by the 70th section of the principal act to a registered proprietor when he shall be desirous of mortgaging his registered land or estate, to obtain from the registrar a special land certificate for that purpose, shall be extended to a registered proprietor when he shall be desirous of raising money under this act upon the land or estate.

5. The estate in land described in land certificate may be charged by a declaration according to form in schedule hereto, with a principal sum bearing interest thereon for the issue of debentures as hereinafter provided.

Declaration may contain in relation to the property charged any powers, conditions, and provisions to which the charge shall be subject.

Land certificate and declaration to be sent to the registrar, and after registration to remain in his custody, and be within sect. 137 of principal act for inspection and otherwise: provided that no property shall be charged by any declaration with an amount exceeding two-thirds of the valuation thereof, to be made as hereinafter provided.

Registered owner, previously to registration of declaration, to deposit at the office of Land Registry all deeds and evidences of title in his possession or power relating to the property; and also a valuation on oath of the value of the property charged.

6. Declaration to have no other operation as to the property charged than is expressed in this act.

7. At any time or times after registration of declaration, registered owner for time being may issue debentures for loans, and interest in accordance with and within the limit of the declaration in Form (B.) in schedule.

Debentures to be numbered consecutively.

8. Registration of debenture to relate back to date of registration of declaration, and prevail over any title registered in the meantime, except any other registered debenture under same declaration: provided that registration of a judgment, &c., shall prevent registration of debenture until discharge of judgment, or consent.

Debentures issued under same declaration payable without preference. Owner of land to satisfy registrar, by affidavit or otherwise, that no just right of any third person will be injuriously affected by registration of debentures.

9. Debenture may have annexed to it coupons for interest, payable to bearer.

10. A debenture to be within the 17 & 18 Vict. c. 113 (Locke King's Act).

11. For purposes of provisions of principal act in relation



to indefeasible title, registration, land certificates, or otherwise applicable to an interest, for entry of which in record of title that act makes provision, the ownership of a debenture shall be deemed to be an interest in land.

12. In entering in record of title the ownership of a debenture, sufficient to describe the declaration and specify the number of land certificate without describing the land.

13. A registered owner of a debenture, or his registered executors, administrators, or assigns, may transfer, according to the Form (C.) in the schedule hereto, the debenture, and by such transfer all rights of action and suit, and all benefits under this act and otherwise, which the transferor had in respect of the debenture at the time of the transfer, shall become vested in the transferee to be exercisable in his own name.

14. Debenture or transfer to have no effect against property until registration.

15. Notwithstanding anything in the principal act, the property charged shall not be affected by any trust affecting a debenture, nor shall the registered landowner be affected by any notice whatever of any such trust, nor shall the registrar, either in respect of the registered landowner or a debenture owner, receive any notice, however given, of any such trust: provided that nothing herein contained shall be deemed to take away from the registered owner of, or a beneficiary in, a debenture, or other person interested therein, any right as to restraint of conveyance, caveat, injunction, or otherwise, under the sections numbered 93 to 103 inclusively in the principal act.

16. Discharge of debenture. 87th section of principal act.

17. Satisfaction of debenture by payment into Court of Chancery, under Trustees Relief Act. Order of court and certificate of Accountant-General to be registered.

18. Investment on a debenture to be within trust to invest on real security.

19. Stamps on declarations, debentures, and transfers.

20. On default in payment, the registered owner of debenture may give notice at the address appointed in declaration for payment.

If default continue for seven days, he may give notice to registered owner, and also at Land Office, of intention to apply for liquidator at any time not earlier than fourteen days or later than three months after notice.

21. The Court of Chancery, on application of debenture holder, may appoint a liquidator and a banker; may supply vacancies; and direct remuneration and expenses.

22. The liquidator shall have powers and duties following:—

To take possession of deposited deeds and evidences of title; to inspect and take copies of such other deeds and evidences as owner might inspect or take copies of.

To take possession of the property charged, and to recover and receive the rents and profits thereof.

To let all or any of the property charged for such terms of years, and at such rents, and subject to such covenants, conditions, and agreements, and in such manner as from time to time the liquidator may deem fit.

To make repairs, insure against loss by fire, and to do all other acts necessary or expedient for the proper use and occupation and maintenance of the property charged.

To employ and pay a receiver or manager of the property charged for any of the above-mentioned purposes.

To sell the property charged by public auction or private contract, and either together or in separate parcels, and to buy in the same, or any part thereof, and resell the same, and to make any such sale or resale subject to such conditions of sale, and at such times, and in such manner as liquidator may think fit, and to employ and pay any auctioneer for any of such purposes.

To execute in the name of the liquidator all deeds and instruments which the liquidator may deem necessary for letting or transferring the property charged, and effectually vesting the same in any lessee or purchaser thereof.

To pay all monies arising from the rents and profits, and from the proceeds of any lease or sale of the property charged, on the receipt thereof, to the banker, to a separate account to be kept by the liquidator.

To pay thereout all necessary and proper outgoings and disbursements due and payable in respect of the property charged.

To pay the interest and the principal money due on the

registered debentures, without preference or priority, in the manner therein provided.

After paying all outgoings and disbursements, interest and principal due on the debentures, and the salary or remuneration, costs, charges, and expenses to be paid and allowed to the liquidator, to pay the balance in the hands or under the control of the liquidator, and restore any property remaining unsold, and any deeds and evidences of title, and documents relating thereto, remaining in the possession of the liquidator to the registered landowner.

To pay into the Bank of England any money which shall, under the last preceding provision, be applicable in payment of interest or principal due on a registered debenture, and shall be unclaimed for three calendar months after the time when all the principal money due on the debenture shall have become payable by the liquidator, and to make such payment into the Bank of England as a trustee having in his hands such unclaimed money in trust for the person then entitled to it, within the operation of the said act of the 10 & 11 Vict., and the acts of Parliament and General Orders of the Court in relation to that act.

To file in the court a just and true account at the end of every three months, of all moneys received and paid, during that period, by or on account of the liquidator, and of the balance remaining in his hands or under his control.

To appoint a solicitor for any purposes requiring legal advice or assistance, and to pay him such costs as, being allowed on taxation, may be necessary in that behalf.

23. The court may make order, as to any of the above-mentioned powers and duties, that the liquidator shall not exercise the same without the sanction or further direction of the court, and make such orders as it may deem necessary to enforce the due execution of the powers and duties of the liquidator, or otherwise, in relation to the execution thereof.

The court may at any time after an order for the appointment of a liquidator has been made, and upon proof to the satisfaction of the court that all proceedings under the order ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it may deem fit.

The court in all proceedings under this act may have regard to the wishes of the registered owners of the debentures, and may, if it thinks fit, direct meetings of them to be summoned, held, presided over, and conducted in such manner as the court may direct, for the purpose of ascertaining their wishes.

24. Operation of liquidator's deeds of lease and conveyance.

25. Orders of court registered at the Land Registry to be evidence.

26. Costs in court.

27. Debenture owner shall not be entitled to any other remedy against property charged than remedy herein provided, but shall be entitled to any remedies to enforce the covenant in the debenture.

28. Notices or matters directed to be given or delivered may be left at or sent by post to the proper address, which, in the case of the registered land owner, or of a registered debenture owner, shall be his address registered at the office of Land Registry for service, and in case of any other person his usual or last known place of business or abode.

A notice by post shall be sent within such time as shall admit of its being delivered in the due course of delivery within the period prescribed for giving the notice.

In proving notice, it shall be sufficient to prove that the notice was properly directed and put into the post.

29. The entries to be made under this act at the office of Land Registry to be made in such books, and in such manner and form, as the registrar may from time to time appoint, but it shall not be necessary to print any instrument or other matter to be made or done under this act.

30. Registrar, &c. not liable to action.

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## THE JURIST.

LONDON, APRIL 8, 1866.

THE Report of the Select Committee appointed to inquire into the working of the Bankruptcy Act, 1861, recommends such material alterations in the law of bankruptcy, that it is hopeless to expect the introduction during the present session of any measure based upon the suggestions of the commissioners; and, indeed, while fully admitting the great defects of the present law, we cannot but think that some of the suggestions in the Report require grave consideration and considerable modification. We will proceed to notice some of the resolutions which appear to us to be of doubtful expediency. Resolutions 5 and 6 recommend that the office of official assignee should be abolished, and that, on adjudication, the property of the bankrupt should remain in his charge, in trust for his creditors, without power of alienation, until the appointment of a trustee, or other special order. This resolution may have been founded upon the evidence of a solicitor of great experience, who, in his examination before the commission of 1854, expressed his belief, "that in very many cases the property might quite as safely be left in the hands of the bankrupt who has been hunted by his creditors previously, as be intrusted, not to the messenger, but to the messenger's man." The same gentleman added, "that he had again and again known a man struggle against bankruptcy, in consequence of the pain he knows his wife and family will endure by the introduction of the messenger's man, than from any publicity which he will have to undergo."

To obviate this occasional hardship on an honest bankrupt, there is a provision in sect. 108 of the Bankruptcy Act, 1861, which relieves the bankrupt from the presence of the messenger, if the official assignee or the court shall be of opinion that the keeping possession is not requisite for the due protection of the creditors. This is surely a wiser provision than the one suggested by the Report, which leaves every bankrupt, whether honest or fraudulent, in the entire control of his property until the trustee is appointed. It is true, that the next resolution empowers the court of adjudication to order measures to be taken, if necessary, for the safe custody of the property, until the trustee is appointed; but the court will not put itself in motion, and it is matter of experience, that creditors will not exert themselves to protect their own interests. It is not necessary to preserve official assignees in order to secure a bankrupt's property; but it is well worth consideration, whether there should not be some officer of the court of adjudication whose duty it shall be, in the first instance, to take possession of the property, and to retire from possession, in case the court should think keeping possession is not necessary.

Then come the resolutions regarding the appointment of a trustee. The creditors are to meet as soon as possible. We presume they are to be convened by the court of adjudication; and those who have veri-

fied their claims are to appoint a trustee, and at the same time appoint two unpaid inspectors from among the creditors, who are to superintend without remuneration, the proceedings of the trustee. This is a suggestion which, we think, will never work well. Unpaid inspectors will, as a general rule, leave everything to the trustee. Human nature does not like to be unpaid for services rendered, and men of business especially are disinclined to work for others gratuitously. To a certain extent the inspectors would be working in protection of their own interests; but if creditors to a large amount, they will probably be fully occupied with their own business, and will not have time to superintend the trustee closely; if creditors to a small amount, they will not think it worth while to do so, and the result will be, that everything will be left to the trustee. The trustee himself is to be paid a reasonable remuneration by the creditors; and where the bankrupt's estate is considerable, it will be well worth their while to appoint an efficient man, and to pay him handsomely. As he is to have power to admit or reject claims, he should be a man competent to decide upon their legality; and in large bankruptcies, it would probably be the practice to appoint a lawyer trustee; but lawyers do not love less than reasonable remuneration, and are wont to put a proper value upon their services; and the risk would be, that in small bankruptcies, where the estate could not afford a competent trustee, there would be great mismanagement of the available assets. One general provision regulating the management of all bankrupts' estates, great and small, appear to us to be inexpedient.

Then comes a resolution that a bankrupt, who has paid 6s. 8d. in the pound to those creditors who have proved under his bankruptcy, shall be freed from all claims capable of proof; that a bankrupt, who has not paid so much in the pound, should be freed at the expiration of six years from the date of his adjudication. This seems to be a very strong measure: there are many cases in which a bankrupt, if he has traded with common caution and care, ought to pay more than a dividend of one-third of his debts; many in which, without any fault on his part, he cannot pay so much—each case should stand on its own merits. Whereas under the resolution, no man who, from whatever causes, is unable to pay the 6s. 8d., can hope to retrieve his fortunes; for the feeling that for six years more he must struggle on to clear himself from past liabilities, will be enough to break down the energies of the most resolute individuals: either there should be a discretionary power in the Court in each case, or the time during which the discharge is delayed should be considerably shortened.

The 22nd and following resolutions propose to make important alterations in the present law as to deeds of arrangement:—

"22. That where a deed is to have the effect of binding creditors who have not executed it, the court in which it is registered should have jurisdiction to determine whether it has been duly executed, or is in other respects valid.

"23. That this jurisdiction should be exercised by the court which would have exercised the jurisdiction

in bankruptcy, and that every creditor should prove his debt in respect of which the deed is signed, before such deeds shall be binding on any creditor who has not executed it.

"24. That the amount of the debt to be proved should be ascertained in the manner provided in resolution 8 (i. e. deducting the value of securities).

"25. That no deed of assignment should be binding on any creditor who has not executed it unless all the estate and effects of the assignor, which in case of bankruptcy would have vested in the trustees, should have been thereby assigned for equal distribution among the creditors.

"26. That no such deed of composition, assignment, or inspection should discharge the debtor from debts due to creditors who do not execute it, unless all the creditors receive a dividend of at least 6s. 8d. in the pound, or else until six years shall have expired from the date of such deed."

We apprehend that these resolutions would have the effect of removing from the superior courts of common law all jurisdiction over deeds of arrangement. By resolution 22, the court in which the deed is registered shall have jurisdiction to determine upon its validity. Unless this means exclusive jurisdiction, it would make no alteration in the present state of the law. Resolution 23 seems to make the jurisdiction exclusive; and if it does, the result would seem to follow, that every action brought by a creditor to recover his debt must be stayed until the Court of Bankruptcy has decided on the validity or invalidity of the deed.

The 25th resolution proposes to overrule the decisions in equity and in the Exchequer Chamber in *Clapham v. Atkinson*, that a cessio bonorum is not necessary for the validity of a deed of arrangement; and we think the alteration a most expedient one. It is a hardship upon a creditor who is unwilling to execute the deed. It may be for very good reasons that he should have no security for his composition beyond the promissory note of the debtor, or his covenant to pay by instalments. It may seem expedient that the debtor should in some cases be left in possession of his property, but we believe that the practice has been one of the main causes of discontent with the present bankruptcy law.

Resolution 26 is open to the same objections which resolutions 18 and 19, relating to the discharge of the bankrupt, suggest. Is a creditor to wait for six years to see whether the deed is to be binding on him, or is he to wait, at all events, till it is ascertained whether the debtor will pay 6s. 8d. in the pound?

Resolution 27 proposes to establish "a court of bankruptcy in the metropolis, of which the judges of the superior courts of equity and common law should sit as judges;" and resolution 28 proposes to give an appeal to this court from all orders of a county court, or of a single judge in the metropolis, relating to matters above the value of 20*l.*, and from all other orders when the court or judge shall allow a special case for appeal. And resolution 30 would abolish the metropolitan and district courts of bankruptcy.

Resolution 27, we trust, will never be carried out. People seem to think that the judges of the superior courts have nothing to do, and that it will be quite refreshing to them to provide them with occupation. Whereas, the cry of late years has been for more judges, to keep down the arrears of business, and to perform the varied work which the judges of the superior courts have already conferred upon them. This resolution, coupled with the subsequent ones, which abolishes the present bankruptcy courts, would, in all probability, greatly increase their labours.

Upon the whole, the resolutions of the committee

may lead to the changes which the bankruptcy law so urgently requires; but they require considerable modification and alteration. It is to be hoped that the Legislature will speedily apply itself to the subject.

## REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS

APPOINTED TO INQUIRE INTO THE WORKING OF THE  
BANKRUPTCY ACT, 1861, AND TO REPORT THEREON.

(Ordered to be printed the 21st March, 1865).

Resolved, that it is the opinion of this committee—

### *Matters prior to Bankruptcy.*

That imprisonment of debtors at the suit of the subject to compel the payment of money, under any judgment, decree, or order of any court, should be abolished.

That a creditor, under any judgment, decree, or order, should have the same power of arresting the person of his debtor, who may be about to quit the kingdom, as a creditor now has before judgment, under the act 1 & 2 Vict. c. 110; and the debtor should be detained in custody until he has either given security or paid the demand, or been discharged in due course of law.

That the power of an execution creditor to enforce the payment of a debt above 50*l.* should be extended to any sum due under any judgment, decree, or order of a court of justice.

### *Adjudication of Bankruptcy.*

That adjudication of bankruptcy should be made by a court in the metropolis, or by a county court.

### *Proceedings on Adjudication.*

That the office of official assignee should be abolished.

That on adjudication the property of the bankrupt should remain in his charge in trust for his creditors, without power of alienation, until the appointment of a trustee, or other special order.

That the court of adjudication should be empowered to order such measures to be taken as may be necessary for the safe custody of the property, and the disposal of it between adjudication and the appointment of a trustee.

That any creditor should only be entitled to vote on proceedings in bankruptcy in respect of the balance due, after deducting the value of all securities for his claim, including bills of exchange, and other obligations, as provided in the Bankruptcy Act of Scotland.

### *Administration of Assets.*

That the creditors should meet as soon as possible after adjudication, and those who have verified their claims should elect a trustee.

That they should, at the same time, elect two or more inspectors from their own body to superintend on their behalf, without remuneration, the proceedings of the trustee.

That the estate of the bankrupt should vest in the trustee on his appointment, and he should possess full power to collect and realise the estate, and distribute it amongst the creditors.

That the trustee should be empowered to admit or reject the claims of any creditor, and any creditor should be at liberty to appeal to the court of adjudication against such decision.

That when an appeal from the rejection of the trustee shall not be made within a reasonable time, the creditor should be finally excluded from the dividend thereupon made, but without prejudice to a proper adjustment of his claim if afterwards admitted at any future dividend.

That the trustee should keep a proper record of the proceedings, and present accounts periodically to the

inspectors, and afterwards to the accountant in bankruptcy, shewing the administration of the assets.

That the trustee should give security for the performance of his duty, and be paid a reasonable remuneration, to be fixed by the creditors.

That the court of adjudication should have power, on the application of a creditor or of the trustee, to make the orders necessary to compel a due compliance with the provisions of the bankrupt laws.

That the accountant in bankruptcy should be required to examine all such accounts as the trustee may be required by law to file, and to issue in each case such directions as may be necessary for the due accounting by the trustees. Such directions to be enforced by the court of adjudication.

#### *Discharge of Bankrupt.*

That whenever the bankrupt shall have made a full disclosure of his dealings and affairs, and a surrender of all his property to the satisfaction of the court of adjudication, and shall have paid a dividend of 6s. 8d. in the pound to those creditors who have proved their debts under his bankruptcy, he should be freed from all claims capable of proof in the bankruptcy.

That in all other cases in which a bankrupt shall have made a full disclosure of his dealings and affairs, and a surrender of all his property to the satisfaction of the court, he should be freed from all such claims after the expiration of six years from the date of the adjudication.

That the payment by the bankrupt, after the adjudication, to all his creditors who have proved under the bankruptcy, of such an amount as will, together with what is actually paid under the bankruptcy, make up the dividend required by the 18th resolution, should have the same effect as if the whole of such dividend had been paid under the bankruptcy.

#### *Punishment of Bankrupt.*

That such wilful acts of debtors tending to delay or injure their creditors as shall be declared by law criminal, should be made punishable only in the ordinary criminal courts of justice.

#### *Administration under Deed.*

That where a deed is to have the effect of binding cre-

ditors who have not executed it, the court in which it is registered should have jurisdiction to determine whether it has been duly executed, or is in other respects valid.

That this jurisdiction should be exercised by the court which would have exercised the jurisdiction in bankruptcy, and every creditor should prove his debt, in respect of which the deed is signed, before such deed shall be deemed binding on any creditor who has not executed it.

That the amount of the debt to be proved should be ascertained in the manner provided in the 8th resolution.

That no deed of assignment should be binding upon any creditor who has not executed it, unless all the estate and effects of the assignor, which in case of bankruptcy would have vested in the trustee, shall have been thereby assigned for equal distribution among the creditors.

That no such deed of composition, assignment, or inspection, should discharge the debtor from debts due to creditors who do not execute it, unless all the creditors receive a dividend of at least 6s. 8d. in the pound, or else until six years shall have expired from the date of such deed.

#### *Courts of Bankruptcy and Officers.*

That there should be established a Court of Bankruptcy in the metropolis, and the judges of the superior courts of equity and common law should sit as judges in that court.

That there should be an appeal to the Court of Bankruptcy from all orders of a county court, or of a single judge in the metropolis, relating to matters above the value of 20l., and from all other orders when the court or judge shall allow a special case for appeal.

That there should be a chief accountant, who should supervise the accounts of trustees, and perform such other duties as are provided for in the Bankruptcy Act of Scotland.

That the present Metropolitan and District Courts of Bankruptcy should be abolished as soon as practicable.

#### *Consolidation.*

That the bankrupt laws should be amended in the above particulars, and be consolidated.

#### APPENDIX.

Return of the Deeds registered in the Court of Bankruptcy, and in the Office of the Chief Registrar, during the Months of November and December, 1864; shewing the Amount of Stamp and Ad-valorem Duty paid thereon; the Amount of Property or Composition comprised therein or distributable thereunder; and the Amount of Unsecured Debts above 10l. comprised therein.

—	Number of Deeds.	Stamp Duty.	Amount of Estate and Effects comprised in or Distributable under.	Amount of Unsecured Debts under 10l.
Nov. 1864 ..	455	Ad valorem .. .. £2619 5 0 10s. registration stamps .. 227 10 0 1s. search stamps .. 15 15 0 £2862 10 0	£1,047,700 0 0	£3,938,125 0 6
Dec. 1864 ..	518	Ad valorem .. .. 3116 10 0 10s. registration stamps .. 259 0 0 1s. search stamps .. 16 16 0 £3392 6 0	1,246,600 0 0	4,049,240 11 2

#### *Note by the Chairman (Mr. Moffat).*

The "amount of estate and effects" exhibits merely the proposed amount of composition, and the debtor's estimate of the value of the assets, upon which assignments are accepted by creditors.

The members of the committee were—The Attor-

ney-General, Mr. Moffat, Mr. Murray, Mr. Malins, Mr. Weguelin, Mr. Gathorne Hardy, Mr. Crum-Ewing, the Lord Advocate, Mr. Lowe, Mr. Vance, Mr. Cave, Mr. Göschen, Mr. Roebuck, Mr. Tavernor John Miller, Mr. Ayrton, and Mr. Dunlop.

(Mr. Malins did not attend any of the meetings of the committee).



# REPORT OF COMMISSIONERS APPOINTED TO INQUIRE INTO THE WORKING OF THE LAW RELATING TO LETTERS-PATENT FOR IN- VENTION.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

May it please your Majesty,

WE, the Commissioners appointed to inquire into the working of the Law relating to Patents for Inventions, humbly present to your Majesty the results of our investigation, in this our report.

Our attention was, at the outset, directed to the consideration of those defects in the working of the present system which, since the amendment of the law in the year 1852, had become so generally felt, as to have given occasion for the institution of the present inquiry.

Of these, the most important appear to be the protracted litigation and consequent expense, which in almost every case result from the present mode of trying questions of patent rights. Two instances were stated to us in evidence, in which the law expenses of plaintiff and defendant together amounted to 26,000*l.* and to 15,000*l.* respectively. The course of litigation began in the former case in 1857, and may at the present moment be still further protracted; in the latter it lasted from the year 1842 until 1855. It may be added, that since the Commission met, a single case has occupied the attention of the Court of one of the Vice-Chancellors for upwards of thirty days.

The multiplicity of patents, arising from the facility and diminished cost of obtaining them, has been brought to our notice as another serious cause of complaint against the present law. It appears from the tables compiled at the Great Seal Patent Office, that the average number of provisional protections annually granted is now about 3000, while the patents sealed exceed 2000, and that an increase on this average may be expected. The evil arising from this multiplicity of monopolies is alleged to be of a two-fold nature. In the first place, that of the existence of a number of patents for alleged inventions of a trivial character; in the second place, that of the granting of patents for inventions which are either old or practically useless, and are employed by the patentees only to embarrass rival manufacturers. Thus in either case that monopoly, one of the main grounds of defence of which is the stimulus it offers to invention, obstructs, instead of aiding, the progress and improvement of arts and manufactures.

On the other hand, we have been pressed with the opinion that the cost of obtaining letters-patent, together with the fees payable on their continuance up to the full term of fourteen years, although reduced to 175*l.*, payable by instalments, of which the first does not exceed 25*l.*, is still so high as to be an insuperable bar to the poor inventor in obtaining the protection to which he is fairly entitled.

Again: it is claimed by inventors on the ground of public policy, that the tax imposed on the granting of patents, and thereby indirectly, on inventors, should be no more than sufficient to cover the expenses of the Great Seal Patent Office, and of the necessary libraries and museums connected with it. At the present date, it appears that the accumulation of surplus fees (after allowing for all such expenses), since the year 1852, amounts to more than 200,000*l.*, and that for future years the annual surplus upon the present footing may be estimated at 40,000*l.*

With such considerations before us, and knowing that from the nature of the subject the remedies suggested would vary within very wide limits, we determined, as the basis of our inquiry, to draw up a series of questions which should invite suggestions upon

those points of the present system where amendment seemed to be required.

The following questions, while they formed to some extent, the groundwork of our oral examinations, have been widely circulated among the chambers of commerce in the principal cities and towns of this kingdom, and have been submitted to such other societies and persons as seemed to us to be likely to afford assistance in investigating the subject before us:—

1. Should the cost of obtaining letters-patent be diminished, or increased; if either, to what extent; and should the payment be made in one sum, or by annual, or other instalments?
2. Does the present mode of obtaining payments appear to you satisfactory? Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place? If so, how should the tribunal be constituted before which such investigation shall be conducted, and should the judgment of such tribunal be final?
3. Should the investigation be ex parte or public, and subject to opposition? Should the present practice as to caveats be adhered to?
4. Have you reason to suppose that public inconvenience is caused by the multiplicity of patents?
5. Do you consider that patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?
6. Should greater facilities be provided for the repeal of invalid patents?
7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by patentees?
8. Should the granting of licenses, in your opinion, be made compulsory, and can you suggest any practicable method by which this should be done?
9. Do you think it expedient that patents should be granted to importers of foreign inventions?
10. Do you think it expedient that patents should be granted to foreigners residing abroad, or to their nominees?
11. Is it expedient to make any, and if so, what, alteration in the law relating to prolongations and confirmations?
12. Is it expedient to make any, and if so, what, alteration in the law respecting disclaimers and memoranda of alterations?

We have thought it most convenient, in considering the evidence before us, to arrange it under the following heads:—

I. A statement of the successive stages of procedure in applying for the grant of letters-patent; of the fees payable at each stage, and during the continuance of the term of fourteen years; and of the procedure on disclaimers, memoranda of alterations, confirmations, and prolongations.

II. Opinions on the question, whether it is or not expedient that patents should be easily and cheaply granted.

III. Objections to the present mode of trying cases of patent rights, and alterations which may be suggested.

IV. The various opinions on the working of the system, as regards disclaimers, memoranda of alterations, confirmations, and prolongations, and on the propriety of granting patents to importers of foreign inventions, and to foreign inventors.

The evidence on these latter branches of our inquiry, as well oral as written, may be classified under three general heads:—First, that of judges and members of the legal profession more especially acquainted with this branch of the law, and of the gentlemen offi-

cially engaged in the working of the present system; secondly, that of patent agents; thirdly, that of engineers and manufacturers, many of whom represent in their own persons the conflicting interests of the inventor and of the user of inventions.

## I.

The following table shews the general results of applications for patents under the present system, from its commencement, on the 1st October, 1852, to the end of the year 1863:—

	1852. 3 Mths.	1853.	1854.	1855.	1856.	1857.	1858.	1859.	1860.	1861.	1862.	1863.	Totals.
Applications . . . . .	1211	3045	2764	2958	3106	3200	3007	3000	3196	3276	3490	3309	35,592
Ditto with provisional specifications . . . . .	1178	2994	2722	2900	3064	3164	2956	2963	3145	3228	3437	3252	34,983
Ditto with complete specifications . . . . .	33	51	42	58	42	36	51	47	51	48	53	57	569
Ditto for English inventions . . . . .	1014	2439	2397	2133	2565	2399	2299	2455	2564	2392	2545	2421	27,623
Ditto for foreign inventions . . . . .	197	606	367	825	541	801	708	545	632	884	945	888	7,939
Provisional protections . . . . .	1176	2973	2704	2892	3052	3146	2949	2940	3125	3178	3388	3199	34,721
Notices to proceed . . . . .	973	2363	2050	2271	2342	2294	2174	2193	2318	2273	2439	2361	26,051
Oppositions entered . . . . .	69	131	67	49	61	54	48	43	38	30	15	20	625
Hearings of oppositions, before law officers . . . . .	65	119	61	48	56	48	44	43	34	28	10	20	576
Warrants granted . . . . .	918	2190	1878	2047	2097	2081	1954	1979	2065	2049	2192	2005	23,495
Warrants refused . . . . .	9	23	11	8	13	10	7	2	7	9	2	3	103
Oppositions to sealing entered . . . . .	4	5	2	8	4	3	1	5	2	2	1	1	38
References to law officers by Lord Chancellor . . . . .	1	1	1	1	1	—	—	—	1	1	—	—	8
Hearings before Lord Chancellor . . . . .	4	3	2	5	2	3	1	3	1	2	—	1	27
Patents sealed . . . . .	914	2185	1876	2044	2094	2028	1954	1976	2061	2047	2191	2094	23,463
Specifications filed in pursuance of letters-patent . . . . .	865	2071	1774	1938	2010	1943	1878	1900	1966	1969	2105	2011	22,430
Patents void for want of specifications filed . . . . .	23	74	66	55	47	52	31	39	47	35	34	28	581
Complete specifications filed with petition on which patents have been sealed . . . . .	26	40	36	51	37	33	45	37	48	43	49	53	493
Ditto lapsed by reason of non-sealing of patent . . . . .	7	11	6	7	5	3	6	10	3	5	4	4	71
Stamp duties of 50% paid before the end of third year . . . . .	310	621	513	551	573	584	539	542	579				
Patents lapsed at end of third year . . . . .	581	1490	1297	1438	1474	1392	1394	1395	1435				
Stamp duties of 100% paid before the end of the seventh year . . . . .	102	205	140	195	214								
Patents lapsed at end of seventh year . . . . .	208	416	373	356	359								

The first step on the application for letters-patent is, to lodge at the Great Seal Patent Office the petition, which discloses only the title of the invention; the provisional specification, "describing the nature of the invention," and a solemn declaration by the applicant that he believes himself to be the true and first inventor. These documents are referred to one or other of the law officers of the Crown, whose duty goes no further than to decide whether or not the nature of the invention is sufficiently described by the provisional specification. By sect. 8 of the Patent-law Amendment Act, 1852, the law officer is at liberty to call, in aid of his decision, mechanical or scientific assistance, and to order the payment of such fees as he may think fit to the persons so called in. This power is, however, only occasionally exercised. The law officer, upon being satisfied of the sufficiency of the provisional specification, grants his certificate, allowing provisional protection. The granting of the certificate is then advertised in the London Gazette, and in the Journal of the Commissioners of Patents.

This investigation before the law officer may, however, be avoided by lodging, in the first instance, a complete specification, "particularly describing the nature of the invention, and in what manner the same is to be performed;" in this case the certificate issues as of course.

Within four months from the date of his application, notice must be given by the applicant of his intention to proceed with his patent; advertisements of this intention, stating nothing more than the title of the patent, are then officially issued, and a period of twenty-one days is allowed, within which objections

to the grant may be lodged at the Great Seal Patent Office. The case between the applicant and the objector is then heard by the law officer, the parties usually appearing separately, the provisional specification being in practice regarded as a secret document. When, however, from the mode of conducting the opposition, the law officer finds that the nature of the new invention has become known to the opponent, he sometimes uses his discretionary power of hearing the parties in the presence of one another.

Cases have sometimes occurred in which the law officer has refused his fiat, on the general ground of want of novelty. This, however, has only been where it was brought to his knowledge that the invention claimed was clearly not new. For from the fact that no appeal lies from his refusal of the fiat, the inclination has always been to grant the application where a fair doubt exists.

The applicant, if successful upon this hearing, obtains from the law officer his fiat for the warrant; but the objector has still a right (by entering a caveat at the Great Seal Patent Office) to appeal to the Lord Chancellor against the issue of the fiat.

The next stage is the application for sealing the letters-patent, which must be made within three months from the date of the warrant. Here there is again an opportunity of opposing the grant. Notice of objection must be lodged, as at the former stage, and the parties are then heard before the Lord Chancellor, who has the power (occasionally, though not often, exercised) of referring the matter to the law officer for his opinion. The decision of the Lord Chancellor is, in any case, final; the patent, if suc-

cessful, being sealed and dated as of the date of application.

The following is a table of the fees payable up to the grant of letters-patent:—

On lodging petition . . . . .	£5
For certificate of notice to proceed . . . . .	5
On warrant . . . . .	5
On sealing . . . . .	5
On specification . . . . .	5
Total . . . . .	£25

In accordance with the rule that the provisional protection lasts for six months only from the date of application, or for such further time as the Lord Chancellor may, upon petition of the applicant, in his discretion, allow, the complete specification must be filed within that period, or within such further time as may have been allowed. If this be not done, the protection ceases, and the grant, if made, becomes void.

In order to maintain the validity of the grant, the patentee must, before the end of three years from the date, pay an additional sum of 50*l.*; and before the end of seven years, the further sum of 100*l.*; thus making the whole cost in fees 175*l.* About two thirds of the patents granted become void at the expiration of the third year, for non-payment of the fee of 50*l.*, and less than one-tenth are continued beyond the seventh year.

The mode of obtaining the repeal of letters-patent is by writ of scire facias. Since the alteration of the practice in 1852, by which the patentee was allowed the right of replying, this mode of proceeding, at no time common, has fallen into disuse, as will be seen by the following table:—

Number of patents repealed by scire facias from 1617 to October, 1852 . . . . .	19
Number of patents repealed by scire facias from October, 1852, to December, 1861 . . . . .	None.

The patentee may at any time during the continuance of his grant, by petition to the commissioners of patents, apply for leave to disclaim a part of the title or of the specification of his patent, or to alter either of them, but so that neither disclaimer nor alteration shall extend the exclusive right. The matter is then referred to the law officer, and on his fiat the disclaimer or memorandum of alteration is filed at the Great Seal Patent Office, with specification. Annexed is a table shewing the number of these applications inrolled during the last eleven years:—

*Number of Disclaimers and Memoranda of Alterations filed during the last Twelve Years.*

OLD LAW.		Year.		Number.
Year.	Number.	Year.		
1850 . . . . .	18	1855 . . . . .		12
1851 . . . . .	22	1856 . . . . .		8
1852 (9 months) . . . . .	18	1857 . . . . .		13
NEW LAW.		1858 . . . . .		9
1852 . . . . .	7	1859 . . . . .		6
1853 . . . . .	15	1860 . . . . .		2
1854 . . . . .	9	1861 . . . . .		3

In cases where subsequently to the taking out of a patent, it is discovered by the patentee that some part of the invention for which such patent is claimed already exists in a printed form, but having long escaped public notice, has become obsolete; and where a re-discovery by the patentee has taken place, application may be made to the Judicial Committee for confirmation of the patent, notwithstanding want of novelty in the invention for which it is claimed.

The same mode of procedure is followed for the purpose of obtaining prolongation of the full term of fourteen years, the Judicial Committee having power to re-

commend to your Majesty the extension of the original term for a further period of fourteen years. The usual length of time of extensions, however, is not more than from three to six years. Advertisements of the application for prolongation are inserted in certain local and metropolitan newspapers, and objections are taken by entering a caveat. The objector must lodge his grounds for opposition in writing, and may appear at the hearing of the application in support of them. In all cases the law officer attends at this hearing to watch the case on the part of the public, and has a right to take part in opposition to the extension.

Three general rules may be laid down, by which the Judicial Committee have been guided in recommending prolongations. The patentee must shew, first, that the invention is of great ingenuity and merit; secondly, that it is of considerable public utility; thirdly, that, in spite of his reasonable exertions to promote the invention, the remuneration he has received from it is inadequate.

The following table shews the number of confirmations and prolongations applied for, and granted from, the year 1835 to 1862:—

		<i>For Prolongation.</i>	
Granted . . . . .			62
To patentees . . . . .	48		
To assignees . . . . .	14		
Dismissed . . . . .			46
On application of patentees . . . . .	28		
" " assignees . . . . .	18		
Withdrawn . . . . .			29
			137
		<i>For Confirmation.</i>	
Granted . . . . .			1
To patentee . . . . .	1		
Dismissed . . . . .			6
On application of patentees . . . . .	5		
" " assignees . . . . .	1		
			7
Total . . . . .			144
Lodged and pending in 1863, 8 cases.			

## II.

On the question whether patents should be made easy or difficult to obtain, we find a division of opinion; some witnesses denying, others affirming, the existence of public inconvenience from an indefinite multiplication of these temporary monopolies.

In the opinion of the former class, such inconvenience either does not exist at all, or, if it is any slight degree felt, is so exceptional as to require no special legislation. They maintain that, as a rule, patents which are either frivolous in their character, or questionable on the ground of want of novelty, are not supported by the patentee when exposed to the test of payment for renewal, or of the expense of litigation. They contend, that without the protection given by a patent, many inventions, useful in character, though not of primary importance, would either not be made, or, being made, would remain undivulged; that to decide beforehand with certainty on the value or worthlessness of an invention is seldom possible; and that the evil remedies itself, inasmuch as worthless patents are seldom continued beyond the period of three years.

The majority of witnesses, however, decidedly affirm the existence of practical inconvenience from the multiplicity of patents. It is clear, that patents are granted for matters which can hardly be considered as coming within the definition in the Statute of Mo-

nopolies, of "a new manufacture." It is in evidence, that the existence of these monopolies embarrasses the trade of a considerable class of persons, artisans, small tradesmen, and others, who cannot afford to face the expense of litigation, however weak the case against them may seem to be; and a still stronger case is made out as to the existence of what may be called obstructive patents, and as to the inconvenience caused thereby to manufacturers directly, and through them to the public.

From a paper drawn up at our request by the superintendent of specifications, it appears, that upon examining into the first 100 applications for patents in each of the years 1855, 1858, 1862, the results were, in his opinion, that in 1855, 26 were manifestly bad for want of novelty, and 6 more partly so; in 1858, 14 manifestly old, and 1 partly so; in 1862, 7 were old, and 1 would probably turn out to be so. An instance, illustrating the mode in which these patents are used, is given in evidence, where royalties had been demanded, and in most cases obtained, by the patentee of a machine, which turned out, upon investigation, to be identical with one which nineteen years before had been well known and publicly used.

Other instances will be found in the evidence of particular manufactures and branches of invention which are so blocked up by patents, that not only are inventors deterred from taking them up with a view to improvement, but the manufacturer, in carrying on his regular course of trade, is hampered by owners of worthless patents, whom it is generally more convenient to buy off than to resist. The evil also results in another practice having the same obstructive tendency, namely, that of combination amongst a number of persons of the same trade to buy up all the patents relating to it, and to pay the expense of attacking subsequent improvers out of a common fund. From a comparison of evidence, it cannot be doubted that this practice prevails to a considerable extent. We must also conclude, that when the obstruction is not to be got rid of without the expense and annoyance of litigation, in a large majority of cases the manufacturer submits to an exaction, rather than incur the alternative.

We desire to call special attention to the evidence given by the First Lord of the Admiralty, and by various witnesses on behalf of the War Department, shewing the embarrassment which has been caused to the naval and military services by the multitude of patents taken out for inventions in use in those departments. It appears to us necessary for the public service, that for the future no patent should be granted without the insertion of a proviso allowing to the Crown the unrestricted use of the invention therein patented, the compensation for such use to be fixed by the Treasury.

Having in view the several opinions thus shortly adverted to, we have to consider the evidence:—

1. As to the cost of obtaining and renewing letters-patent, and as to the mode of payment.

Notwithstanding the prevalence of an opinion, that patents may be, and are unduly, multiplied, a very small minority is in favour of increasing the cost of obtaining them. Of those who have given evidence in this sense, some object altogether to the granting of patent rights, and therefore consistently desire that, if not abolished, they should be reduced in number by any practicable method; others contend that the mere fact of having a larger payment to make, would render projectors more careful not to incur expense on behalf of inventions of doubtful utility and novelty. Many witnesses think that the scale of payment was, on the revision of the law in 1852, fixed too

low, but do not consider that it could now be prudently raised.

Objection is taken by a third class of witnesses, to the payments of 50*l.* and 100*l.* on the renewal of the patent at the end of the third and seventh years respectively. It is alleged, that the periods of payment are fixed too early in the duration of the monopoly; that many valuable patents have, even in their seventh year, failed to become profitable, from the difficulty of inducing manufacturers to adopt new methods of working, and that in such cases the patentee is either unable to procure the necessary sum, or is unwilling to risk the additional expense, and therefore allows his patent to drop; that thus the system inflicts a hardship on the inventor, and retards the general progress of improvement. Several modifications of the law are proposed; one alternative being to reduce these payments, another to postpone them till the end of the fifth and ninth years respectively. It is also suggested, that some inconvenience arises from the fact, that on non-payment of the renewal fees the patent becomes at once void, and that much of the hardship complained of would be obviated, if the Lord Chancellor were empowered to allow the continuance of the patent, on payment being made, though after the proper time, provided the patentee were able to prove that the delay had arisen from accident, or from a mistake not involving gross negligence.

Among the engineering and manufacturing class, there seems to be some inclination to urge the adoption of a system of annual payments, on the ground that the burthen would thus be more equally distributed over the whole period of the patent, and that the rich and the poor inventor would thereby be brought upon more equal terms, while there would be a constant tendency on the part of patentees to allow an unremunerative patent to drop at once.

The propriety of a system of annual payments is, however, denied by the greater number of those who have given evidence before us, who rely on their experience of the difficulty that is now constantly found in getting patentees to insure the renewal of their patents by the necessary formalities; they maintain, that this difficulty would be the source of still greater evil, if the same process had to be gone through from year to year.

Whatever be the scale of payment adopted, we find a very general expression of opinion, that the price to be paid by inventors, in the aggregate, should not be more than sufficient to provide for the expenses of the patent office, library, and museum; and that these should be maintained in the highest state of efficiency, so as to give inventors the utmost facility for ascertaining the status of every branch of invention.

(To be continued).

## Court Papers.

NISI PRIUS SITTINGS, IN AND AFTER  
EASTER TERM, 1865.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Friday .. April 21	There will not be any sittings during term in London.
2nd sitting, Wednesday .. 20	
3rd sitting, Wednesday, May 3	

After Term.

Friday..... May 12 | Tuesday..... May 16

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

**Court of Common Pleas.***In Term.*

MIDDLESEX.

LONDON.

Friday ..... April 21

Wednesday ..... 26

Wednesday ..... May 3

The Court will not sit in  
London during term.*After Term.*

Friday ..... May 12 | Monday ..... May 15

The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

**Exchequer of Pleas.***In Term.*

MIDDLESEX.

LONDON.

1st sitting, Friday.. April 21

2nd sitting, Wednesday .. 26

3rd sitting, Wednesday, May 3

There will not be any sittings  
during term in London.*After Term.*

Friday ..... May 12 | Monday ..... May 15

The Court will sit during and after term at ten o'clock.

The Court will sit in Middlesex, at Nisi Prius, in term, by adjournment from day to day, until the causes entered for the respective Middlesex Sittings are disposed of.

**BOOK RECEIVED.**

A Manual of the Practice of Conveyancing, shewing the present practice relating to the daily routine of conveyancing in solicitors' offices. To which are added, Concise Forms and Precedents in Conveyancing, Conditions of Sale, Conveyances, and all other Assurances in constant use. Third edition, revised and considerably enlarged. By G. W. Greenwood, Solicitor, and Henry Horwood. 8vo. Pp. 454.—Stevens, Sons, & Haynes.

**Imperial Parliament.**

HOUSE OF LORDS.—Friday, March 30.

PRIVATE BILLS COSTS BILL.

The report of amendments in this bill was agreed to.

Lord Redesdale proposed a new clause, the object of which was to make the amount deposited with a private bill a lien for costs.

Lord Stanley of Alderley opposed the clause. The money deposited with a private bill was deposited as a security that the proposed works would be executed. Besides, to require money to be deposited as security for costs was an entirely novel principle, for it was one not adopted even in the courts of law.

Lord Houghton observed, that though the clause might be a good one, it was not germane to this bill, and, if adopted, might imperil the measure.

The Marquis of Bath said it was well understood that the money deposited with a private bill was no real security for the execution of the works.

The Lord Chancellor thought that the proposition would not operate unreasonably if the bill happened to be rejected; but if the bill passed it would be open to objection that a lien on the deposits should be given.

Lord Redesdale said, that he would bring up a clause, the operation of which should be limited to those cases in which a bill was lost.

The report was then agreed to.

HOUSE OF COMMONS.—Friday, March 30.

COURTS OF JUSTICE CONCENTRATION (SITE) BILL.

On the order of the day for resuming the adjourned debate on going into committee on this bill,

The Attorney-General presented a petition from the Masters of the Bench of the Hon. Society of Lincoln's-inn, pray-

ing that if the courts of law and equity were to be concentrated, no change might be made from the site proposed in the bill before the House.

Mr. Lygon said, no opportunity had yet been afforded for considering whether the Thames Embankment would or would not present the proper site for the concentration of the new courts of justice. The only two sites hitherto proposed were, the Carey-street site, which was adopted by the Government, and the Lincoln's-inn-fields site. The Carey-street site was estimated in 1861 to cost 78,000L., and he apprehended that its value had not in any degree diminished since then. He did not find that the select committee to which that bill had been referred had given any precise estimate of the expenditure, but he would assume that the estimate of 1861—viz. 678,000L. for the site alone—was accurate. The next point to be considered was, whether that site would be sufficient. Now, the evidence of Mr. Pennethorne, the architect of the Board of Works, who was called as a witness by the promoters of the bill, shewed that several very important courts remained unprovided for by the measure. These were the Central Criminal Court and the Bankruptcy Court, and there was no provision in the plan for a court in which all the twelve judges should assemble, similar to the present Exchequer Chamber; and Mr. Pennethorne admitted that his plan was so made as to occupy the whole available space, and that if another judge were appointed equivalent in rank to a Vice-Chancellor, and as chief judge in bankruptcy, accommodation could only be found for him by removing some of the offices up stairs. Now, since the commission had sat, and since the committee of 1861 examined this subject, another site had been opened which, at all events, deserved consideration; and, further, the Carey-street site would be difficult of access. The Strand was choked up with traffic, and although it might be said that the Thames Embankment would relieve the Strand, yet they knew that the more facilities were offered for the traffic of the metropolis the more that traffic was found to develop itself. The traffic along the New-road had in no degree been diminished in consequence of the opening of the Metropolitan Railway. At the Thames Embankment they had the most perfect means of access on all sides. Some persons thought an excellent site would be available in the immediate neighbourhood of Westminster-bridge; others preferred the neighbourhood of Fife-house, where a very large tract of land would remain at the disposal of the public. He moved, as an amendment, that the bill be recommitted to the former committee, and that they be instructed to inquire into capabilities of the Thames Embankment as a site for the proposed buildings.

Sir J. Shelley seconded the amendment.

Sir H. Cairns believed he expressed the opinion of the great mass of honourable members present, as well as his own, in recommending the Government not to accede to the amendment, which would defeat the measure for the present session. He had not heard what were the reasons of greater convenience to the public on which the proposal of the Thames Embankment site rested. No doubt it would be a fine thing to have the ornamental façade of the Palace of Justice fronting the river. Could there be a doubt as to what would be most convenient to the public? but who were the lawyers on this question? They were the great body of solicitors of London, who transact not only the legal business of London, but the legal business of the whole kingdom; and they prefer the Carey-street site, because on all sides in the immediate neighbourhood north of that locality they have their offices, and they could not get the same accommodation elsewhere. Then, on the south side of the Carey-street site was the Temple, where the barristers said the very same thing. Carey-street, then, stands exactly in the centre of these two localities, and would obviously be most suitable as a site for the proposed courts. The arrangement did not include the Central Criminal Court in this Palace of Justice. When you get criminal courts you must have the gaols in immediate connexion with them. To bring prisoners to the centre, where the civil business of the country is transacted, would be extremely inconvenient. As to the Exchequer Chamber, all conversant with the detailed arrangements, know that it is composed of the justices of any two of the three superior Courts of Common Law; and when the time for their sitting comes—on very few days in the year—there must of necessity be a cessation of the business of the two justices' own courts, either of which would be available, pro hac vice, for

the Exchequer Chamber. So there is no arrangement for the Bankruptcy Court. Now the registrars and accountants being connected with the mere administrative and financial details of bankruptcy, their presence would be unsuitable in the Palace of Justice; but if any judicial business is to be transacted by a judge in bankruptcy or by a judge of appeal, accommodation would easily be found for business of that kind. With reference to access, any one who knows the sort of people who go to courts of justice, know perfectly well that there is very little crowding of carriages about them. The erection of the new courts would not cause any great addition to the traffic of the Strand, but if it should prove otherwise, one of the great advantages of the Carey-street site is, that you have two parallel lines of access—one at the north and the other at the south; and if it should appear that there is not width enough for the Strand and Carey-street, it would be very easy, in pulling down houses in Carey-street, to add a few feet to the width of the roadway, and thus give as much access as could be required. He believed the site chosen was the best that could be selected, and in saying this he was satisfied he spoke the opinion of all those engaged in legal pursuits. He did not think a single valid objection has been urged against it.

Mr. H. Seymour supported the amendment.

Mr. Malins earnestly opposed the amendment.

Mr. Cowper expressed his opinion that an unfair use had been made of Mr. Pennethorne's evidence. From the year 1860, every one appeared to agree that seven acres and a half would be amply sufficient for the new courts, and in that opinion Mr. Pennethorne himself concurred. He distinctly stated that when called before the committee he did nothing more than shew that the site was sufficient. Supposing for a moment that the courts of law could not be properly accommodated on the ground floor, nothing could be easier than to double the accommodation by placing some of the courts on the first floor. He believed that even without this increase, which could be easily made, five acres and a half would be found amply sufficient, not only for the present but also for future requirements. The site itself was also not limited, because additional property in the immediate neighbourhood could easily be purchased. A large number of petitions were presented in its favour, and only three against—the latter merely asking for certain alterations in the clauses. He had at first thought that from its natural features, the fine buildings about it, and the proximity of the river, the embankment would be a desirable site. Having introduced the Embankment Bill, too, he naturally felt desirous that the locality should receive due consideration. After fully reflecting upon the matter, however, he felt that it would be totally impossible to place the courts of justice upon the embankment. If erected between Somerset-house and the Temple the new courts could not be built in advance of their line of frontage, because if such a course were adopted the appearance of Somerset-house and the Temple would be utterly ruined. They would, therefore, have to be erected upon that portion of the Strand between Somerset-house and the Temple, on which there stood at this moment the best houses to be found in that part of the town. He believed, however, that by choosing this site, a great sacrifice both of convenience and money would be incurred simply for the purpose of procuring additional beauty and ornament. It was obvious that, by adopting this site, the chief purpose for which it was proposed to incur this expenditure would be frustrated. The concentration, which they so much desired, could only be obtained by the selection of a site in the immediate neighbourhood of the Inns of Court, the chambers of counsel, and the offices of solicitors. As all the Inns of Court, with the exception of the Temple, were situated on the north of the Strand, the access to the new courts, if erected between Somerset-house and the Temple, would be extremely inconvenient for Gray's Inn and Lincoln's Inn. Barristers from the latter Inn especially would have to make their way through the tangled maze of courts and alleys which by the present bill were to be swept away to make room for these new courts. The inconvenience consequent upon the distance from the chambers of counsel would fall mostly upon the suitors. The chief difference, however, between the two sites, was one of cost. The Carey-street site was at present occupied by wretched and unhealthy buildings, while that on the south side of the Strand would, from the very nature of the buildings which covered it, be extremely expensive. A competent authority had estimated

the compensation in the latter case at about double what would be required in the case of Carey-street.

Mr. A. Mills and Mr. Crauford also opposed, and the amendment was negatived without a division.

The House then went into committee.

Upon clause 2,

Sir W. Jolliffe hoped that care would be taken to acquire sufficient land to insure proper access to the new courts, and that there would not be the same necessity as had arisen in the case of the new foreign office, of purchasing additional land to provide proper approaches. It was bad policy, first, by the outlay of public money, to increase fourfold the value of surrounding property, and then to purchase at that enhanced value.

Mr. Cowper said that every care would be taken to make proper approaches; and he thought he might venture to state, that there would be good access to the new courts on all sides of the building.

The remaining clauses were agreed to, and the House resumed.

On the order for going into committee upon the Court of Chancery (Ireland) Bill,

*The Attorney-General*, after a comprehensive review of the Irish Chancery system, and of the schemes suggested for its reform, gave an exposition of the scheme proposed in this bill, as regarded the constitution of the court and the modes of procedure, which were made to approximate to those of the English court, and pointed out the differences between this bill and the two bills introduced by Mr. Whiteside (which stood for committee upon the orders for that evening), entering at much length and with great minuteness into the technicalities of equity procedure.

Mr. Whiteside, in a speech of equal length and minuteness of detail, condemned the Government measure. He objected to the mixing up in a single bill two matters entirely distinct—the constitution of the court and the procedure. He complained of the costly machinery of the bill, which would greatly enhance the expense of Chancery proceedings in a poor country, while the proposed constitution of the court would inflict a heavy burthen upon the public. He entered very fully into the grounds upon which his own bills were founded—the one containing a scheme for a new constitution of the Court of Chancery in Ireland, the other proposing a reform of its procedure; and he moved, by way of amendment, that this bill be referred to a select committee, to which he proposed that his own bills should be referred; the committee to be empowered to take evidence.

Sir C. O'Loughlin opposed this amendment. No subject, he observed, had received more consideration than that of Chancery reform in Ireland. Ample evidence was before the House, which was perfectly competent to deal with it. He replied briefly to Mr. Whiteside.

Mr. George supported the amendment, observing that the scheme in the bill before the House was opposed to the opinion of Irish Chancery judges, and that it would cause an additional expense of 12,500*l.* a year.

Mr. Scully remarked, that the commissioners, upon whose report the bill was founded, had overlooked a very important subject referred to them, the reduction of costs to suitors. He saw no use in sending the bill to a select committee, except in regard to this point, as to which the House had no materials.

Mr. Walpole pointed out what he regarded as defects in principle in the Chancery reforms. The question was, how should they be dealt with? The Attorney-General proposed to deal with them in a committee of the whole House, and Mr. Whiteside in a select committee. If time permitted he should prefer the latter mode.

Mr. Malins said he should vote for the Government bill, and recommended Mr. Whiteside not to persevere in his motion to refer it to a select committee, but to endeavour to amalgamate his bills with that of the Government.

Sir H. Cairns would be quite satisfied to let the details of the bill be considered in a committee of the whole House.

After some observations by Sir G. Bowyer, and a reply by *The Attorney-General*, upon a division the amendment was negatived by 68 to 30, and the House went into committee *pro forma*.

Monday, March 21.

The Courts of Justice Concentration (Site) Bill was read a third time, and passed.

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# THE JURIST.

LONDON, APRIL 15, 1865.

THE rapid growth and extension of works to be carried, under the powers of an act of Parliament, through great cities and trading districts, has given rise to a controversy of no ordinary importance to the trading community, on the one hand, and companies engaged in such undertakings, on the other; the question being, whether companies are liable to make compensation to individuals for loss of trade caused to them by the temporary obstruction of public streets and thoroughfares, in the execution of such works. The Courts of Exchequer, Common Pleas, and Queen's Bench, decided that companies were liable to make compensation in such cases, and the decisions to that effect were for a time accepted by that portion of the public whom they concerned; as conclusive, and were extensively acted upon. It appears, however, that the law was by no means settled by these decisions, the Court of Error in the Exchequer Chamber having overruled them, and held that a company is under no liability whatever to make compensation to any individual simply for the loss caused to his trade or business by the obstruction of a public street or thoroughfare, in the execution of their works under the powers of an act of Parliament. *Senior v. The Metropolitan Railway Company*, in the Exchequer; *Cameron v. The Charing-cross Railway Company*, in the Common Pleas; and *Ricket v. The Metropolitan Railway Company*, in the Queen's Bench, having been overruled by *Ricket v. The Metropolitan Railway Company*, in the Exchequer Chamber (11 Jur., N. S., part 1, p. 260), and by *Cameron v. The Charing-cross Railway Company* (Id. 282). We understand that the case is to be brought for final decision before the House of Lords.

The question arose on the clauses as to compensation in the Consolidation Acts, the Lands Clauses, sect. 68, and the Railways Clauses, sect. 6, by which a party is entitled to compensation "in respect of any lands, or of any interest therein, which shall have been taken for, or injuriously affected by, the execution of the works;" and the first step appears to have been to place some well-defined legal limit to the words "injuriously affected;" to draw a boundary line, beyond which claims for compensation should not be permitted to travel; and the Courts came to the conclusion, that the words "injuriously affected" must be confined to cases for which an action could have been maintained by the party injured had there been no statute authorising the works to be done; that whatever amount of damage a party may sustain from the execution of the works, his case is without remedy, unless he can shew that he would have had a right of action for some injury in respect of land, or an interest in land, but for the existence of the statutory powers under which the injury is inflicted. The rule seems to be well founded; since with reference to compensation, the Legislature is considered as neither taking away existing rights nor conferring new ones. There seems to be no difference of opinion whatever between the

Courts below and the Court of Exchequer Chamber as to the rule, that to bring the case within the compensation clauses, the claim must be one for which, but for the act authorising the works, an action would have lain. That rule is adopted throughout. The difference is on other grounds, viz. whether, in the case put, an action would have lain at all? and whether, if it would have lain, the injury was an injury to an interest in land, or a personal injury only? In *Senior v. The Metropolitan Railway Company*, compensation was claimed for loss of trade occasioned by the obstruction of a highway during the execution of the works of a railway company; and Mr. Baron Bramwell stated that he always understood the principle of the cases to be, that where premises are damaged, under such circumstances that, but for the parliamentary powers, an action would be maintainable against the company, the party interested in the premises was entitled to compensation under the Lands Clauses Consolidation Act; and applying that test, he was of opinion that it was an injurious affecting of premises to obstruct the access to them, so that the business could not be carried on so profitably. And in *Cameron v. The Charing-cross Railway Company* (16 C. B., N. S., 447), Mr. Justice Willes expressed his opinion as follows:—"Damage to a man's interest in land necessarily includes damage to the business which he carries on upon the land, by diverting it from its accustomed channel. Such an interest is not merely personal; it is an interest which a man enjoys in respect of the land, a reasonable expectation of profit from the exercise of his abilities in some particular place, by carrying on business there. That reasonable expectation is commonly called 'goodwill,' and is a marketable thing. I must confess I do not see why a man should not recover damages for being deprived of that. This is nothing more than is to be found in Comyn's Digest, 'Action upon the Case for a Nuisance' (C.), where it is said, with some doubt, that an action will lie, if, 'by stopping the highway, a man is constrained to use a longer or more difficult way (Dan. 173), or if, by stopping the way, the sale of his coals is hindered in an adjacent colliery.' If he had said that buyers were prevented from coming, it seems to have been agreed that the action would lie. The case (*Ivern v. Moir*, 1 Salk. 15; 1 Ld. Raym. 486; Holt's Com. 58; 12 Mod. 262; Carth. 451; Comb. 490; Willes, 74a) is so explained in *Chamberlain v. The West of London and Crystal Palace Company* (2 B. & S. 605), where the matter was thoroughly considered. Then, if an action could have lain for this injury against a person doing it without the sanction of an act of Parliament, the party injured is entitled to claim compensation under the Lands Clauses Consolidation Act." The judgment of the majority of the Court of Appeal in the Exchequer Chamber, in *Ricket v. The Metropolitan Railway Company*, delivered by Chief Justice Erle, confirms the rule, that it is the foundation of a claim for compensation that an action would have lain. "We assume it to be clear, that there is no title to compensation under the statutes for an obstruction, unless without the statutes an action would have lain for the obstruction and the special damage, accord-

ing to the case *In re Penny and The South-eastern Railway Company* (7 El. & Bl. 660; S. C., 3 Jur., N. S., part 1, p. 957; 11 Jur., N. S., part 1, p. 260). The judgment then proceeds to the consideration, first, whether the facts shew that an action would have lain; and, secondly, whether, if an action would have lain, it would have been for an injury to an interest in land; and the conclusion arrived at is, that neither would any action have lain for the injury complained of, viz. loss of custom to a public-house through the access thereto having been rendered less convenient by the obstruction; nor, if the action would have lain, did the damage accrue to the plaintiff in his capacity as owner of an estate in land; nor was any interest in land injuriously affected. Starting with the proposition, that an action lies where the exercise of the right of way by or on behalf of the plaintiff has been obstructed, and a greater damage has been caused to him thereby than is caused to the Queen's subjects in general, by obstructing them in the exercise of their right, the Court of Error held, after an elaborate discussion of cases and principles, that the plaintiff would have had no right of action, because he was not obstructed in the exercise of any right vested in him, and that the damage was not a direct and immediate consequence of the obstruction complained of, and there had been no obstruction to the exercise of a right of way by or on behalf of the plaintiff; neither he himself, nor any one standing in the relation to him, such as servant, agent, tenant, or any other legal relation which gave to the plaintiff a legal interest in his use of the way having been obstructed, but some unknown travellers having chosen some other path, and the plaintiff having no manner of legal right in the choice they made, either as to the path they took, or as to their refreshment at the public-house of which he was the lessee and proprietor. And it was further observed, that the common law limited the remedy for obstructions to public rights to indictment, unless there was special damage, to prevent innumerable actions; and that the same reason applied in full force to prevent innumerable claims on account of an alleged loss of profit caused by obstructions to a public thoroughfare.

The question, therefore, that seems reserved for the House of Lords finally to adjudicate upon, is, whether an action will lie at common law by the tenant or owner of land or houses, where such an obstruction of a public highway renders his house more difficult of access, so as to discourage customers from coming to the house for the purposes of trade. Access to land is, undoubtedly, a right incident to it, on which its value mainly depends, and it would seem like a damage to land if its value was really diminished. A house of good access might let for twice the rent of one of bad access; and in the case of an obstruction made, as a purely illegal act, there is nothing very apparent why the man who is damaged in the value of the land, should not have an action against the wrongdoer for driving away his customers. The Court of Error in the Exchequer Chamber has held that he has none, upon the ground apparently that the damage is too remote, by diverting from the house persons and

strangers unknown, though if himself, or a servant or agent, or any one else connected with him by contract were hindered, an action would lie. The distinction does not seem at all to take account of the fact, that in both cases alike a man has suffered damage in the value of his property from the purely illegal act of a third person. It is true, that in the case of an injury caused to all the Queen's subjects, the remedy is by indictment; and it would seem, that what at common law would be remedied by indictment, is a proper subject for opposition to the bill before the committees of the Houses of Parliament, but, in the present case, there is an exceptional injury to the individual who has his land lowered in value. The public will wait with anxiety the final determination by the House of Lords of this important matter.

### Review.

#### *On the Report of the Patent Law Commissioners. By ROBERT WILSON.\**

THE most important points in the recommendations of the Patent Law Commissioners are—1. That, without investigating the merits of the invention for which a patent is claimed, the law officers of the Crown should cause a careful inquiry to be instituted, as to whether there has been any previous "documentary publication of the invention, either by grant of letters-patent or otherwise," which publication would be a ground of refusal, subject to appeal to the Lord Chancellor. By "otherwise," we presume, is meant publication in any printed book at home or abroad, or in any foreign record.

2. That the validity of a patent should, in case of a dispute, be tried before a judge, with the aid of scientific assessors chosen by him, but without a jury, unless at the desire of both parties to the proceeding.

3. That patents ought not to be granted for inventions imported from abroad.

4. That no extension of the original period of fourteen years should be allowed.

Mr. Hindmarch, one of the commissioners, concurring in some, but not in all, of the recommendations contained in the report of the other commissioners, and thinking that the law might be amended in other particulars, presented a separate report. In that he gave the following reasons against an official investigation of the novelty of an invention:—

"It appears to me that any official inquiry into the novelty of an invention sought to be made the subject of a patent must necessarily be incomplete and unsatisfactory. To institute such an inquiry, even in an imperfect manner, would occasion a considerable amount of expense to the public, and I think it better to adhere to the present practice, under which the responsibility of inquiry into the novelty of an invention sought to be patented is thrown upon the applicant who alleges his invention to be new."

Mr. Hindmarch also dissents from the proposal to deprive the Privy Council of their jurisdiction to extend the term of letters-patent. But, perhaps, the most practically important recommendation in his report relates to patent agents, who are not at present subject to the control of any court or other

\* Read at a meeting of the National Association for the Promotion of Social Science, Monday, March 29, 1865. Wm. Hawes, Esq., in the chair.

authority, and of whom many now in practice are a curse to the community. The remedy, of course, is to subject all persons desirous of practising as patent agents to a preliminary examination, to require them to take out an annual certificate, and to place them under the control of the Court of Chancery. As the certificate would fairly be taxable, this proposition may be favourably entertained by the Chancellor of the Exchequer.

Whatever is said on the subject of patent law or practice by the able and experienced senior member of the firm of Wilson, Bristows, & Carpmael, must be deserving of respectful attention. The main subject of his paper is the question, whether there should be a preliminary investigation as to novelty and merits, or either; and he concludes in favour of such an investigation on both points. The great evil of the present system of granting patents for every invention, however trivial, if it be an invention, is thus illustrated:—

"Whether to ascertain the presence of merit before granting the patent, was justly treated by the commissioners as a chief question of patent law reform:—

"Have you," said Lord Stanley to Sir Francis Crossley (1549), 'considered the question, whether there ought to be a preliminary inquiry before the granting of patents, in order to prevent a multiplication of useless or frivolous patents?'

"I think," said the witness, 'that it would be very difficult for any one appointed by the Government to decide what is a frivolous patent. I believe that a patent was taken out for simply putting India-rubber at the end of a glove, so as to make it tight round the wrist; that might have been considered a frivolous patent, but I believe it was thought to be a very good one in the trade, and it was new and useful.'

"Profitable I dare say it was; but an objector might plausibly ask what the patentee had done to entitle himself to a fourteen years' monopoly. He had made a convenient sort of glove, likely to be well received by the public; being first on the field he had the prestige of introducing it; and he might fairly claim protection in the use of any distinctive name which he might think fit to give to it. But why was the free-trading of the public to be suspended for fourteen years in favour of a scrap of India-rubber in the wrist of a glove? Would the use of India-rubber in gloves have been prevented or postponed by withholding the monopoly? Scarcely so; for if the new glove was saleable, there was nothing to prevent its being made and sold without the monopoly.

"India-rubber had been put into braces, trousers, drawers, waistcoats, boots, clogs, and pretty well every other article of civilised dress, with the assumed exception of gloves. Why, then, give a fourteen years' monopoly for so obvious a consequence of things already done, as the transfer of the India-rubber to the gloves?

"The exception that might be taken to the glove patent is twofold, viz. first, that its object was frivolous—a change in the fashion of an inconsiderable article of dress; and, secondly, that its subject was frivolous—the invention, so to call it, of shifting an elastic band from one piece of dress to another.

"Let us now suppose, for the sake of argument, that even under the present law the glove patent was invalid, on the ground of a total absence of invention—who was to dispute it?

"It is," said Mr. Grove (1018), if I may venture to apply his general remarks to a particular case, 'the patentee's interest to give a very large sum to support his patent; his patent, although for a very trivial thing, may, taking the vast extent of sale, be a very lucrative affair; . . . the public is a scattered body,

not one of whom has sufficient interest to meet with equal force the patentee; and that,' continued Mr. Grove, 'is one of the difficulties which I should like to see my way to remedying.'

"From the instance of the elastic glove wrist, we will turn for a moment to a more solid and bulky specimen of triviality.

"Nearly the whole of the patents for the boilers of steam-engines at this moment," said Mr. Scott Russell (768), 'are of no practical value to inventors or to the public, but they are continually getting every man who makes a boiler into a scrape with some patentee, because almost every conceivable form of boiler, and bit of boiler, having been previously patented, one cannot make any sort of boiler without infringing some man's patent.'

On the other hand, we have the opinion of Mr. Carpmael:—

"Would you," said Mr. Grove to Mr. Carpmael (273), 'grant a patent, without any restriction, for anything which the law now calls an invention or an improvement, provided it be fairly described on the face of the specification?'

"Undoubtedly," answered Mr. Carpmael. 'I believe that that is the least of the evils; that it is better to grant a patent upon the risk of the inventor as to whether his invention is new and useful, than to attempt to investigate his invention, which may never come to anything; and yet, if the investigation is made in every case, it would cost a great deal of money without a proportionate benefit to the public or to the inventors.'

"Then you see no inconvenience," said Lord Stanley (274), 'in a multitude of temporary monopolies being created, a very large proportion of which are for inventions of so trivial and worthless a character that it is not found worth while by the inventors themselves to continue their patent beyond the first three years?'

"Forty years' experience," continued Mr. Carpmael, 'has shewn me that there is no prejudice whatever in granting these patents. I have no hesitation in giving the most decided opinion as to there being no prejudice to the manufacturer or the public by these patents being granted.

"I consider it next to impossible," said Sir J. Romilly (p. 178), 'in most cases, to determine beforehand, and until the invention has been put into practical operation, whether an invention for which a patent is claimed is of a trifling or frivolous nature. I believe that the best and most experienced persons might frequently be mistaken, and form an erroneous judgment as to the value of an invention.'

"It is not advisable, in my opinion," said Lord Chelmsford (p. 179), 'to change the present system. An invention which is apparently trivial, but really useful, might be rejected; whilst a trifling invention of no utility will be neglected by the public, and the patentee will alone bear the consequences of his idle and frivolous experiment.'

The investigation must be deferred until the claimant is prepared to file a complete specification; for—

"A preliminary investigation would of necessity involve a judgment upon the form of the specification; for how could novelty be predicated of an undefined invention? One would think, that either the specification ought to be supervised by authority, as Mr. Hindmarch proposes; or else the patentee ought to be rigorously held to have claimed whatever is described in his specification, and is not expressly disclaimed."

"As far as I have seen," said Mr. Justice Montague Smith (1243), 'every man who makes any change whatever in a machine, which he thinks at all beneficial, takes out a patent for it, and embraces probably

the whole machine, and leaves you to find out where his little improvement is."

After citing the adverse opinion of the present Attorney-General, and pointing out that the method of preliminary investigation has been tried and abandoned in France, Austria, Sardinia, and Belgium, and that, though in use in Prussia and America, it does not give satisfaction there, Mr. Wilson insists that in the present state of manufacture and invention, the question of novelty, which has always been allowed to be a ground of preliminary objection, is inseparable from that of relative merit, and that is of necessity a question of discretion:—

"But must the exercise of discretion precede the granting of the patent? Would it not be enough to allow the question of merit to be raised afterwards, as a ground of resistance to the patent, by a plea that the patented invention is not meritorious? I answer in the words of Mr. Grove (1034)—

"We have at present an admitted difficulty; the question is, what are the means of getting rid of it? I am far from saying," he added, with reference to his proposition, that the merit of the invention should be substantiated before the granting of the patent, "that the means do not in themselves present difficulties; the question is, whether the balance of difficulties is not more one way than the other?"

"These words of a commissioner justify me in saying, that the report proposes too much or too little; that we should have either no preliminary investigation, or a complete one; and as the general feeling seems to be, that the patent law, if it is to be preserved, must be changed, I accept the latter alternative. I propose, in short, that the granting or refusal of a patent should be determined in each case, with reference to all its circumstances, by an exercise of discretion. Is it said that meritorious inventions, perhaps a good many of them, will be rejected? I admit this consequence as inevitable; but if the specifications should be registered, with the grounds of rejection, the disappointed applicants might, in some small degree, be compensated by the nation, when the merit of their inventions should have become evident, by honorary distinctions and pecuniary rewards. Or, even if this were not so, we had better have the nerve to cut off a limb, than sit still while the patient is dying of lockjaw.

"The discretionary power of rejection might be exercised, as Mr. Scott Russell proposed (828), not only at starting, but also when stamp duties become payable at the end of the third and seventh years, perhaps also at some later stage:—

"That is to say," as Mr. Grove observed to Mr. Scott Russell, "you would make it incumbent upon a patentee, when he came to make his second payment after the three years, to make out a case before a court, and also at the end of seven years, and so on?" "Yes," answered the witness, "I hold that that is not a new principle, for you at present do it beyond the fourteen years."

"Discretion, then, at starting; discretion at the end of the third year, and at the end of the seventh year, and perhaps also at some period after the seventh year—discretion, eked out by a national compensation or acknowledgment, in honour and money, to unappreciated merit—this principle I submit to the society, as a possible remedy for the multifarious practical evils which at present so largely qualify the benefits of the patent law. Discretion, as the source of discretionary law; the principle from which has been developed the splendid system of equitable jurisprudence which regulates the decisions of the Court of Chancery."

As to the mode of conducting the inquiry:—

"The authority ought, in my opinion, to rest with the law officers; but for their assistance there ought to be a permanent board, combining legal, mechanical, and chemical talents, to exercise functions analogous to those of a chief clerk of a Vice-Chancellor. Perhaps one case in twenty, or a still smaller proportion of the business, would involve a personal exercise of jurisdiction on the part of the Attorney or Solicitor General; and the occasional duty might be remunerated by a moderate fee on every application for a patent.

"It would, I think, be indispensable to the working of the proposed discretionary jurisdiction that the unsuccessful applicant or opponent should have a right of appeal: and the best appellate jurisdiction would be the Judicial Committee of the Privy Council. The right of appeal might be troublesome at first, but only till the new practice should have been worked into shape. An appeal would not harm the respondent, for he might appear in person before the Judicial Committee at a small cost: the appellant would be kept in check by a necessity, to which he should be subject, of giving security for the costs of the appeal."

## REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS

APPOINTED TO INQUIRE INTO THE WORKING OF THE BANKRUPTCY ACT, 1861, AND TO REPORT THEREON.

(Ordered to be printed the 21st March, 1865).

(Concluded from p. 133).

2. As to the introduction of a system of preliminary examination, its character, and by whom it should be conducted.

It is urged, in opposition to any further course of preliminary examination than that which is at present pursued, first, that the principle of our law requires the inventor himself to make such an examination, inasmuch as he takes out a patent at his own risk; and next, that it could not be conducted in a manner free from objection. That if it were ex parte, the interests of the public would be no better protected than they now are; if subject to opposition, the inventor would be deprived of the protection of secrecy, while he would, in fact, be subjected to a premature trial of his patent; and that such a trial, even if it resulted in his success, would be no protection to him against future litigation.

That if the result of such an examination was to be final, the examining body would seldom undertake the responsibility of refusing a patent; if subject to appeal, they would, on the hearing of that appeal, be placed in the position of defendants. That on the whole the result would be, increased expense and delay to the patentee, with no greater security either to him or to the public. These opinions, though proceeding from a limited number of witnesses, deserve consideration, from the knowledge and experience of those by whom they are entertained.

On the other hand, there is a very strong expression of opinion, and one not confined to any particular class of persons, in favour of some more strict preliminary examination. It is suggested by a few of these, but only by a few, that such an examination ought to embrace an inquiry, not only into the novelty, but into the utility of the invention. It is admitted that the inquiry as to novelty must be limited to matter which is to be found in a printed form, and should not extend to oral testimony as to priority of user.

It is proposed that such an examination be conducted by the members of a mixed board of exami-



ners, consisting of one or more barristers, and a proportionate number of practical and scientific men; and that this board should, unless forming part of, or acting in concert with, some special tribunal to be appointed for the trial of patent cases, be assistant and subordinate to the law officers of the Crown, whose official duties in respect to patents should otherwise remain unaltered. That the result of this examination should be, either a decision, subject to one final appeal, or a certificate which, whether favourable or unfavourable, should be appended to the specification.

The general opinion seems to be, that the interest of the public would be sufficiently protected at the hands of the examiners, and that, at any rate, the result would be to exclude many applications which now, of necessity, pass without comment.

With respect to caveats, it is held by a majority of witnesses, that the present system should remain unaltered, subject to such modifications in practice as might be required by the institution of preliminary investigation.

### 3. As to the propriety of making licenses compulsory, or of requiring user within a given period.

As against these propositions, it is contended by some witnesses, that patentees are, as a rule, willing to grant licenses to work their inventions on reasonable terms. To do so is obviously their interest; and it may be assumed, that what is men's interest to do will generally be done. Exceptions may occur; but these, it is asserted, will be insufficient in number and importance to justify a peculiarly sweeping interference with rights to which the law has assigned the character of property.

Apart from the above considerations, the practical difficulties appear to be regarded as all but insuperable. No rule can be laid down for estimating the value of a patent, or the amount of charge which may be reasonably imposed on those using it. These will vary in every instance; and it is manifestly futile to require the inventor to grant a license when applied to, unless some provision be made for determining the price to be paid. In the absence of such provision, a prohibitory price would render the law inoperative. But on this question of price, individual opinions must be expected to vary widely; and it is impossible to suppose that any system of arbitration would prove satisfactory, where neither precedent, nor custom, nor fixed rule of any kind could be appealed to on either side.

### 4. As to the repeal of invalid patents.

It appears to be generally felt, more especially by those who are immediately concerned in managing the litigation of patent rights, that some proceeding, more simple in form, and therefore more expeditious, should be adopted for the repeal of invalid patents. That this might either be by petition to your Majesty in Council, or by motion in a court of equity. The most serious objection to the present mode of proceeding seems to be, that while a patentee, if he maintains his patent, will only get such costs as may be covered by the bond which is required from the petitioner against him; the petitioner, on the other hand, if he succeeds in his object of upsetting the patent, will get no costs.

As regards the issues to be tried, it has not been shewn to us that any alteration in the form of the proceeding for repeal would materially shorten them, or diminish the expenses of the trial.

## III.

The evidence before us shews an almost universal feeling of dissatisfaction with the present mode of trying questions of patent right, while there are many and various proposals for the constitution of a tribunal which should be more expeditious, and less ex-

pensive. The principal fault of the system lies in this—that the jury by whom the case is tried, seldom possess even so much scientific knowledge as is necessary to enable them to understand the evidence. Advantage is constantly taken of this deficiency: first, in a subtle and vague drawing of specifications; again, by an artful generality in the form of framing the issues to be tried; lastly, on the trial, by the introduction of a cloud of scientific evidence, to perplex rather than to explain the true points at issue. It is possible that these difficulties might to some extent be obviated, as has been suggested to us, by requiring a greater strictness in drawing the specification and claim of the patentee, or by a more perfect scheme for settling, in the presence of a judge, the issues to be tried; but it is almost without exception admitted that a radical remedy is only to be found in reforming the constitution of the tribunal itself.

The main point in doubt is, whether this reform should go to the extent of constituting a special court for the trial of patent cases, or whether the existing jurisdictions of the courts of law and equity should be maintained in a modified form. The objections to a special court are various and strong. In the first place, the want of sufficient business to occupy its time fully. Secondly, that, on trials of patent cases, questions are frequently arising which require an extended knowledge of other branches of the law; and that a judge selected for his special acquaintance with mechanical and scientific topics, and one who in his judicial capacity was principally engaged in the consideration of such questions, would not be so competent to deal with the whole subject-matter of the case as one by whom all branches of our law were in turn handled. Thirdly, that such a constitution of the court would render it extremely difficult, if not impossible, to secure an effectual appeal. We do not find that these views (with the exception, perhaps, of the first) have been met by arguments of equal weight. Assuming, therefore, that it would not be advantageous to constitute a special patent court, we have to consider what has been proposed in aid of the existing jurisdictions.

The general proposal is, that the judge, on trial of a patent case, should either be aided by scientific assessors, or that the case should be tried by a jury composed of from five to seven scientific persons. The latter plan does not appear to us to be wholly satisfactory, owing to the difficulty there would always be in getting a sufficient number of scientific men to compose a jury, sufficiently competent and unbiassed.

The conclusion which we have drawn from the evidence is, that a court might be satisfactorily formed on the former plan, taking as a general model of its constitution your Majesty's High Court of Admiralty, assisted by the Trinity Brethren. It is difficult accurately to estimate the weight of evidence, as to whether those assessors should act judicially, or merely by way of instruction and advice to the judge; but the balance seems rather to incline to the latter view, which would place them in a very similar position with the assessors to the High Court of Admiralty. There is, again, a great variety of opinion as to the mode in which the assessors should be chosen. It is said, on the one hand, that they might be selected by the judge, or by the parties, with a reference, in case of dispute, to the judge, from scientific men generally. With respect to this latter proposal, the only doubt is, whether, considering the high value which is put upon scientific evidence, men of sufficient eminence would be induced, by any such fee as the court would pay, to give up either their usual avocations or the chance of being employed by one or other of the parties to the suit. On the other hand, if such assessors are to



be a permanent and independent body, there will be a like difficulty in providing for payment of sufficient salaries to secure the services of scientific men numerous enough to give the opportunity of selection for the various classes of cases, and eminent enough in their professions to be willingly accepted by the parties.

It seems to be generally thought that the assistance of an ordinary jury in patent cases is not requisite; there is, however, a certain amount of unwillingness to give up that which is considered by many the safest form of tribunal for the weighing of facts and probabilities; it has, therefore, been suggested, that the employment of a jury might be at the joint request of the parties, or at the discretion of the judge.

We have been informed that no difficulty would be found in setting apart a court for the trial of patent cases, and in providing for the attendance in rotation of one of the judges of the courts of law and equity.

#### IV.

##### 1. As to granting letters-patent to importers of foreign inventions, and to foreigners.

It has long been the practice, founded on judicial decision, to consider that the use or publication of an invention abroad did not deprive that invention of the character of "a new manufacture within this realm." It appears to us, and is generally admitted in the evidence, that the present facilities of communication subsisting between all parts of the world have done away with the only valid reason for such a construction of the words of the Statute of Monopolies. The object of allowing such patents might fairly be, in an age of slow international communication, to encourage enterprising persons to go in search of, and to introduce to this country, useful processes employed abroad, but not otherwise likely to be adopted here, for the want of which we should long have been behind other nations. It does not, however, seem worth while to continue the same facilities now, when foreign inventions are most frequently patented in this country and in their native land simultaneously; especially, as we are well informed, that one result of the practice is to encourage unscrupulous persons to steal the inventions of foreigners, and to run a race with the legitimate owner to get them patented here.

The general opinion seems to be in favour of granting patents to foreigners, or to their agents or nominees in this country. By some persons it is proposed to limit the grant to natives of those countries whose Governments allow the reciprocal privilege to your Majesty's subjects. And, further, to impose as a condition, that the invention be worked, or licenses granted for working it, in this country, following the system which prevails generally on the continent.

##### 2. As to confirmations.

With a single exception, and that merely as a statement of opinion, unsupported by argument, we find no suggestions made to us with a view to the alteration of the present system on this point. We find that only seven applications have been made for confirmation of a patent under the 5 & 6 Will. 4, c. 83, s. 2, and only one of such applications has been acceded to. We see no reason for retaining a power of which no practical use is made.

##### 3. As to prolongations.

We do not find that the witnesses, with one exception, complain of the existence of prolongations; this may, however, be accounted for by their extreme rarity.

A careful consideration of the evidence given by the clerk to your Majesty's Privy Council, leads us to the opinion, that prolongations should not be in future granted.

The power of granting them is in its nature arbitrary; and it does not seem just that the public should be excluded for a term of years from the use of an invention, which in the ordinary course of law would otherwise become public, simply because the inventor has reaped from it a smaller profit (possibly through his own want of business habits) than he thought himself entitled to expect. The uncertainty, moreover, whether an application for prolongation will or will not be granted, is an evil to all parties concerned.

##### 4. As to disclaimers and memoranda of alterations.

It has been stated to us that the former of these proceedings sometimes results in the enlargement of the patentee's rights, and that more strictness ought, therefore, to be exercised in allowing them.

With respect to memoranda of alterations, we do not find that any serious objection is taken to a continuance of the present system. It is, indeed, suggested that, following the French law, patents of addition should be allowed. No reasons, however, are given us in support of this view.

We have thus stated to your Majesty the general result of the evidence before us, and the conclusions to which we have come after considering it.

We now humbly submit to your Majesty the following recommendations, which are founded on these conclusions:—

#### RECOMMENDATIONS.

1. Your commissioners do not find that the present cost of obtaining letters-patent is excessive, or the method of payment inconvenient; they do not therefore recommend any alteration of the present system on those points; but they think that patent fees should not be made to contribute to the general expenditure of the State until every reasonable requirement of the Patent Office has been satisfied.

2. They are unable to recommend a preliminary investigation into the merits of the invention for which a patent is claimed; but they advise that a careful inquiry be instituted under the direction of the law officers of the Crown, as to whether there has been any previous documentary publication of the invention, either by grant of letters-patent, or otherwise; and if such publication have taken place, that he patent shall be refused.

No evidence other than such documentary evidence should be admissible, and the reasons for the refusal to grant the patent should be certified by the law officers; an appeal from their decision should lie to the Lord Chancellor.

3. Your commissioners are of opinion that the present mode of trying the validity of patents, is not conducted in a satisfactory manner. That such trials ought to take place before a judge sitting with the aid of scientific assessors, but without a jury, unless at the desire of both parties to the suit or action. That such assessors ought to be selected by the judge in each case, and the remuneration to be paid them be included in the costs of the suit or action, and provided for in such manner as the judge shall direct.

That no special judge be appointed for the trial of patent cases, but that the judges of law and equity be empowered to make rules by which one court should sit for trial of patent cases exclusively. That on such trial the judge, if sitting without a jury, decide questions of fact as well as of law.

4. That the granting of licenses to use patented inventions ought not to be made compulsory.

5. That patents ought not to be granted to importers of foreign inventions.

6. That in no case ought the term for which a pa-

tent is granted to be extended beyond the original period of fourteen years.

7. That in all patents hereafter to be granted, a proviso shall be inserted, to the effect, that the Crown shall have the power to use any invention therein patented without previous license or consent of the patentee, subject to payment of a sum to be fixed by the Treasury.

8. While, in the judgment of the commissioners, the changes above suggested will do something to mitigate the inconveniences now generally complained of by the public, as incident to the working of the patent law, it is their opinion that these inconveniences cannot be wholly removed. They are, in their belief, inherent in the nature of a patent law, and must be considered as the price which the public consents to pay for the existence of such a law.

(Signed) STANLEY.  
OVERSTONE.  
W. ERLE.  
W. P. WOOD.  
H. M. CAIRNS.

H. WADDINGTON.  
W. R. GROVE.  
W. E. FORSTER.  
WM. FAIRBAIRN.

Edward Lloyd, July 29, 1864.

#### REPORT OF MR. HINDMARCH.

May it please your Majesty,

As one of the commissioners appointed to inquire into the working of the law relating to letters-patent for inventions, I humbly crave leave to report to your Majesty what I deem to be the results of the inquiry into that subject directed by your Majesty.

I concur in some, but not in all, of the recommendations contained in the report made to your Majesty by the other commissioners, and it appears to me that the law relating to patents requires amendment in several other particulars not mentioned in that report.

I concur in the first recommendation in the report with respect to the cost of obtaining letters-patent; but I think that the mode of granting patents for inventions requires amendment.

It appears to me that the law is at present defective in making no provision for an appeal against the decision of a law officer adverse to an applicant for letters-patent, and I beg leave to recommend that when the decision of a law officer is adverse to a petitioner, he should have the same right of appeal as a person who fails in an opposition, so that the parties may be placed upon an equal footing.

Specifications of inventions are frequently prepared in such a manner as to occasion great difficulty in construing them, and in ascertaining the nature and extent of the claims of invention which they are intended to make. And from this cause the cost of litigating patent rights is often greatly enhanced.

There is too much reason for believing that specifications are frequently thus prepared with a fraudulent object. A specification ought to define the invention intended to be comprised in a patent, so as to enable any person of ordinary skill and intelligence, upon reading it, to ascertain without difficulty the nature and extent of the right conferred by the patent. If an alleged invention cannot be so described, it is one which (if it deserves to be called an invention) ought not to be made the subject of a patent.

I recommend that no patent should be granted for an invention until a specification of it, containing a clear and distinct statement of the claim or claims made by the inventor, has been filed in the Patent Office, and that the sufficiency of all claims in specifications should be ascertained and certified by competent persons appointed to perform that duty.

It appears to me that any official inquiry into the

novelty of an invention sought to be made the subject of a patent must necessarily be incomplete and unsatisfactory. To institute such an inquiry, even in an imperfect manner, would occasion a considerable amount of expense to the public, and I think it better to adhere to the present practice, under which the responsibility of inquiring into the novelty of an invention sought to be patented is thrown upon the applicant who alleges his invention to be new.

According to the present law, an application for a patent is refused if a party opposing the grant makes it clear that the invention was not new at the date of the application, or that the applicant was not then the first and true inventor; but in doubtful cases the practice is to grant the patents, there being at present no means of trying the rights of the parties in a satisfactory manner. I submit that it would be an improvement if, when there is a disputed state of facts with respect to the right of a petitioner to an invention which he claims, the Lord Chancellor were to be authorised to direct the question in issue to be tried between the parties before the grant of any patent for the invention.

The form of a patent might be advantageously shortened; and in order to effect that object, many of the provisions usually contained in patents for inventions might be made applicable to them by express enactment; and I recommend that every patent should be printed and issued, together with a printed copy of the specification of the invention to which it relates.

I concur in the statement in the third recommendation contained in the report of the other commissioners, that the present mode of trying questions of fact respecting the validity of patents is not satisfactory; and I think that the same observation is applicable to the manner in which questions respecting infringements of patents are tried.

The evidence given before the commissioners induces me to recommend that such questions should be tried by a judge or judges, aided (when deemed necessary) by scientific assessors, but without a jury, unless required by both parties to the suit.

And I concur with the other commissioners, that it is desirable that all the judges of the existing courts of law and equity should be made judges of one and the same court, which I think should be a court both of law and of equity, for the determination of all matters in dispute relating to patents, with all the powers of the existing courts respecting such matters, and I recommend that the jurisdiction of the court should extend to the whole of the kingdom.

But without some addition to the number of judges it will be found impracticable to obtain the speedy satisfactory determination of disputes respecting patent rights now desired by the public.

The surplus revenue derived from patents is much more than sufficient to pay the expense consequent upon the institution of such a court as above mentioned, with any additional judge or judges which the business of the court may require; and if any additional judge of that court shall be appointed, the objection to having a judge who confines his attention to a limited class of subjects might be obviated by calling upon him to perform other duties similar to those performed by the other common law and equity judges.

Patent rights are of limited duration, and suits respecting them in the ordinary tribunals of the country have frequently continued until the expiration of the terms for which they were granted. To prevent this evil, I beg leave to recommend, that in patent suits there should be an appeal from the decisions of the judges trying the causes to some of the other judges of the court, and from their decisions to the House of Lords, but no other appeal.

I concur in the fourth recommendation of the report of the other commissioners respecting the granting of licenses, and also in the fifth recommendation, that patents ought not to be granted to the importers of foreign inventions.

But I am unable to concur in the sixth recommendation in the report, that in no case ought the term for which a patent has been granted to be extended beyond the original period of fourteen years.

It is well known to be the policy of the law to encourage the invention of novelties and improvements in the production of useful manufactures by grants of temporary exclusive privileges to the inventors, by whom the knowledge of them shall be first given to the public. The term of fourteen years by the Statute of Monopolies prescribed for the duration of the grants of such privileges appears to be amply sufficient in the greater number of cases in which inventors are to be rewarded by grants of patent rights. But it cannot with fairness be alleged that the grant of such a term must, therefore, in every case, be deemed to be a sufficient reward to an inventor, however valuable his invention may be to the public, whatever may have been the labour and the ingenuity of the inventor in producing and perfecting the invention for the benefit of the public; and although he may not only have made no profit, but sustained great loss, by his endeavours to bring his invention into public use. It appears to me that it is highly expedient that prolongations should continue to be granted in every case in which the public shall be shewn to have derived great advantage from a patentee's invention, and in which the inventor shall have failed, without any fault of his own, during his original term to obtain a sufficient reward for his ingenuity, labour, and pecuniary expenditure. And it appears to be the more expedient to grant extensions of patents in such cases, in order to encourage inventors to apply the peculiar skill and knowledge which they possess to effect the greatest attainable improvement in the practice of their inventions for the benefit of the public.

According to the present practice, however, the interests of the public are not sufficiently protected upon the hearing of applications for prolongations, more especially in unopposed cases, and I recommend a careful inquiry, by competent persons, to be instituted in every case into the claims of the petitioner for the extension sought to be obtained, the result of that inquiry to be reported to the Privy Council at the hearing of the application.

I concur with the other commissioners in opinion, that the Crown should have the power of using any patented invention which may be deemed useful in the service of the country, and that when any such invention shall have been so used, the patentee should be rewarded out of the public treasury, according to the benefit which his invention shall have conferred upon the public service.

It is difficult to say what would be the best mode of determining the amount of the reward to be given to a patentee in such a case; but I recommend that in every case in which the amount cannot be fixed by agreement between the officers of the Crown and the patentee, it should be determined by the tribunal (not being a jury) which by law may be authorised to determine the amount of a patentee's claim for damages in an action for the infringement of a patent.

The law officers of the Crown, according to the present state of the law, have the sole power of disposing of applications for leave to enter disclaimers and memorandums of alteration relating to titles of patented inventions and specifications.

That mode of disposing of such applications is suffi-

cient in many cases, but cases occasionally occur in which important facts come into dispute, which the law officers have not the means of satisfactorily determining; I therefore recommend, that in every such case there should be a right of appeal given to an applicant, or a party opposing the appeal; such appeal to be heard by the Lord Chancellor, or a judge to whom he shall think fit to refer it.

The present mode of revoking and cancelling patents for inventions is by an action of *scire facias*, in which a person complaining of the illegality of a patent is authorised, by the fiat of the Attorney-General, to proceed in the name of the Crown to obtain the judgment of the Court of Chancery for the revocation and cancelling of the patent. This use of the name of the Crown appears to be highly objectionable, and the whole proceeding is cumbrous, dilatory, and expensive. I recommend, that in lieu of the proceeding by *scire facias*, any person complaining of the illegality of a patent, should be enabled to apply by petition in a summary way to the Lord Chancellor to have the patent revoked and cancelled, and that upon every such petition, the Lord Chancellor, or any court or judge appointed by him to hear the matters of the petition, should have the same powers as the Court of Chancery has in an action of *scire facias*.

If a court such as above suggested shall be instituted, the hearing of such petitions might conveniently take place in that court.

Applications for patents, and for leave to enter disclaimers and memorandums of alteration, as well as oppositions to such applications, are generally conducted by persons called patent agents. Some patent agents are persons of skill and probity; but as every person who can obtain employment is at liberty to act as a patent agent, the consequence has been, that grossly incompetent and fraudulent persons have acted as patent agents, to the great loss and injury of unwary inventors induced to employ them.

Patent agents are not at present subject to the control of any court or other authority, and there are, therefore, no adequate means of punishing them for malversation or gross incompetence.

The right of persons to act as patent agents, without being admitted solicitors or officers of the Court of Chancery, has been too long established to be taken away, at all events, so far as respects persons at present in practice.

I beg leave to recommend that the names of all the present patent agents should be registered in the office of the Commissioners of Patents, and that no person should heretofore be permitted to practise as a patent agent until examined by some competent authority, in order to ascertain his competency; that all persons, so registered as patent agents, should annually obtain certificates of their right to practise, and should be made liable to be punished for misconduct by the Lord Chancellor or the Master of the Rolls.

There are now several acts of Parliament in existence relating wholly or in part to patents for inventions. In any alteration of the patent law which may be made by Parliament, I beg leave to recommend that all the existing enactments relating to the subject, passed since the Statute of Monopolies, should be repealed, and the whole of the law (with the exception of that statute) consolidated in one act.

All which I submit to your Majesty with great humility, and with great deference to the opinions of the other commissioners expressed in their report, which are not in accord with those I thus humbly submit to your Majesty.

W. M. HINDMARCH.

Sept. 29, 1864.

REPORT OF MR. FAIRBAIRN.

May it please your Majesty,

I have signed the report, as settled by a majority of the commissioners, with the exception of the sixth recommendation (in which I was unable to concur), "that in no case ought the time for which a patent has been granted to be extended beyond fourteen years." On this question I agree with the views expressed by Mr. Hindmarch in his report, that in cases where the public have derived advantages from a patentee's invention, and where the patentee has not been remunerated, it is then desirable, and highly expedient, that prolongations should be granted. In these views I heartily concur, and also in several useful suggestions contained in that report.

Nov. 15, 1864.

WM. FAIRBAIRN.

Court Papers.

COMMON-LAW CAUSE LISTS, EASTER TERM, 1865.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Bristol—Prothero v. United Merthyr Collieries Co. (Limited)

FOR ARGUMENT.

Moved Easter Term, 1864.

Ches.—Hughes v. Birkenhead Improvement Commissioners (First action, to be argued with D. Stands over till decision in court of error)

—Same v. Same (Second action, Ditto)

—Davies v. Same (Ditto)

Moved Mich. Term, 1864.

Durham—Ecclesiastical Commissioners for England v. Peart

Moamth.—Symonds v. Pickles (Not to be argued until after the decision of a similar point in Exchequer Chamber)

Leicester—Keightley v. Cumberland  
Camb.—Mainprice v. Westley  
Suffolk—Cowles v. Potts

Moved Hil. Term, 1865.

Midd.—Austin v. Bunyard  
—Graham v. East & West India Dock Co.  
—Foley v. East & West India Dock Co.  
—Darke v. Grosvenor and West-end Railway Terminus Hotel Co. (Limited)  
—North British Rubber Co. (Limited) v. Manchester Rubber Co. (Limited)  
Lond.—Kisher v. Marsh.

Tried during Term.

Midd.—Evans v. Skeen  
—Parry v. Fox  
—Sichel v. Purdie  
—Griffiths v. Ware.

SPECIAL PAPER.

Those marked thus \* are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

†Therry & an. v. Lord Fermoy

FOR ARGUMENT.

Worthington v. Sudlow

†Hughes v. Birkenhead Improvement Commissioners (Case in New Trial Paper to be argued with D. To stand over till decision in court of error).

†Same v. Same (Ditto)

†Davies v. Same (Ditto)

\*Bryant v. Foot (Stands for amendment)

†Neven & an. v. Chapman (Stands for arrangement)

\*Nichols v. Nichols

†Same v. Same

†Nicholson v. Guardians, &c. of Bradford Union

\*Ecclesiastical Commissioners for England v. Dean and Canons of Manchester

†Head v. Bush

†Lee v. Great Western Railway Co.

†Darley v. Marson

\*Smith & an. v. Hudson

†Hermillewicz v. Jay

\*Cory & ors. v. Thames Iron Works and Ship Building Co. (Limited)

†Alexander v. North-eastern Railway Co.

\*Backhouse & ors. v. Hall

†Johwald v. Continental Bank Corporation (Limited)

†Newton v. Cowper

\*Moody v. Corbett & ors.

\*Kemp v. Halliday  
Brabant v. Sir T. M. Wilson, in re the Copyhold Acts, &c. manor of Hampstead (Ap. from Copyhold Commrs.)

†Le Strange v. Rome

†Elwin & an. v. Gittos

†Tydeman v. Carne

†Roper v. Taylor.

ENLARGED RULES.

First Day.

Kelly v. Sherlock

Reg. v. Justices of the West Riding of Yorkshire

Reg. v. Overseers, &c. of the Township of Sutton

Reg. v. Backhouse & ors.

R-g. v. London, Brighton, & South Coast Railway Co.

Motion standing for Judgment.

Cowell v. Amman (Aberdare Colliery Co. (Limited).

CROWN PAPER.

Tewkesbury .... Reg. v. Severn Navigation Commissioners.  
Surrey ..... Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).

Cornwall ..... Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe. (To stand over till judgment given in the House of Lords).

Devonshire .... Mayor, &c. of South Molton v. Churchwardens of South Molton.

Lancashire ..... Bevin v. Bird.

Yorkshire ..... Trustees, Committee, and Officers of Ilkley Hospital v. Churchwardens and Overseers of the Township of Ilkley.

Buckinghamshire Reg. v. Trustees of the British Orphan Asylum.

Nottinghamshire ..... Workshop Local Board of Health.

Middlesex ..... Governor of the House of Correction, Coldbath-fields.

Devonshire ..... Harris.

..... Vesey.

Leicestershire .. Inhabitants of Ashby Foville.

Surrey ..... Conservators of the River Thames v. Guardians of the Parish of St. Mary, Lambeth.

Cardiff ..... Guaglieni v. Matthews.

Ramsgate ..... Hammon v. London, Chatham, & Dover Railway Co.

Middlesex ..... Laughlin v. Overseers of the Liberty of Saffron-hill.

Surrey ..... Secretary of State for India v. Churchwardens and Overseers of St. Mary, Lambeth.

Norfolk ..... Brown v. Evans.

Warwick ..... Barker v. Davis.

Yorkshire ..... Reg. v. Richmond & an.

Cambridge ..... Churchwardens and Overseers of Fulbourn.

Kent ..... Inhabitants of Buckland.

Cheshire ..... Heath & ors.

Southampton ... Stevens and Anderson.

Cheshire ..... Mellor v. Lees.

Lancashire ..... Harter v. Overseers of Salford.

Suffolk ..... Great Eastern Railway Co. v. Churchwardens and Overseers of Haughley.

Worcestershire .. Reg. v. Guardians of Stourbridge Union.

Middlesex ..... Hossack v. Gray.

..... Trustees of Homoeopathic Hospital v. Governors and Directors of Poor of St. Andrew's, Holborn and St. George the Martyr.

Staffordshire .... Washington v. Scott.

Lincolnshire .... Brook v. Robinson.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.

Moved Mich. Term, 1863.

Midd.—Parker v. The Great Western Railway Co.

Moved Mich. Term, 1864.

Cornwall—Gaved v. Martyn

—Same v. Same

Moved Hil. Term, 1865.

Midd.—Benham v. Batty

—Deneulin v. Hodgson

Lond.—Tyler v. Charing-cross

Railway Co.

—Woodward v. Wallinger

Lond.—Hunt v. Harris

—Fowler v. English and Scotch Marine Co.

—Mockford v. Spence

—Robinson v. Chartered

Bank of India, Australia, & China

—Heard v. Holman

—Rawlings v. Morgan

—Hirschfield v. Smith

Liverp.—Crow v. Armstrong

—Whitaker v. Rogers

Postponed Motion.

Lond.—Mallet v. Bateman.

### DEMURRER PAPER. SPECIAL ARGUMENTS.

*Wednesday, April 20.*  
 Lyne v. Wyatt (D.)  
 Bullen v. Sharpe (Case at Nisi Prius)  
 Overseers of Sunderland v. Guardians of Sunderland (Case by order)  
 Day v. Simpson (Ap.)  
 — v. Peacock (Case by order)  
 Cobb v. Peacock (Case by order)  
 Binder v. Peacock (Case by order)  
 Phillips v. Thurn (D.)  
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 Great Western Railway Co. v. Willis (Ap.)  
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 Pepper v. Ackenden (Ap.)  
 Wood v. Smith (Ap.)

*Friday, April 28.*

Earl of Shrewsbury v. Knightley (Case at Nisi Prius)  
 Same v. Harbord (Case at Nisi Prius)  
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 Coles v. Turner (D.)  
 Scott v. Jackson (D.)  
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*Wednesday, May 3.*  
 Mayor of York v. Churchwarden of All Saints, York (Ap.)  
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 Alton v. Midland Railway Co. (D.)

### ENLARGED RULES.

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 Surinan v. Gelspecke (Göschel and others garnishees)

### Court of Exchequer.

#### SITTINGS—EASTER TERM.

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Wednesday, April 19	20	Motions and Peremptory Paper.
Thursday	20	Errors, Peremptory Paper, and Motions.
Friday	21	
Saturday	22	
Monday	24	Special Paper.
Tuesday	25	
Wednesday	26	Special Paper.
Thursday	27	
Friday	28	
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Monday, May 1	2	Special Paper.
Tuesday	3	
Wednesday	3	Special Paper.
Thursday	4	
Friday	5	
Saturday	6	
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Tuesday	9	
Wednesday	10	
Thursday	11	

*Days in Term.*

*Nisi Prius.*

Friday, April 21 Middlesex, first Sitting.  
 Wednesday, April 26 Middlesex, second Sitting.  
 Wednesday, May 3 Middlesex, third Sitting.

### NEW TRIALS.

*Moved Hilary Term, 1864.*

Liverpool—Brahner v. Macann (To stand over till special case settled)

*Moved after the 4th day of Hilary Term, 1865.*  
 Middlesex—Lawrence v. Wade

### SPECIAL PAPER.

#### FOR JUDGMENT.

Richards v. Harper (D., heard on the 16th Jan. 1865)

#### FOR ARGUMENT.

Clark v. Magnus (D., to stand over till after issues in fact tried)  
 Cooke v. Mostyn (D., Nov. 14, part heard, ordered to stand over till issues in fact tried)

Campbell v. Dufaur (D., part heard Jan. 18, 1865, to stand over till issues in fact tried)  
 Oakley v. Monck (Sp. case by order of Nisi Prius)  
 Chesterfield and Midland Silkstone Colliery Co. (Limited) v. Hawkins (D.)  
 Wright v. Hunt (D.)  
 Silver v. Bonellis Electric Telegraph Co. (Limited) (D.)

### PEREMPTORY PAPER.

*To be taken on the first Day of Term after the Motions, and to be proceeded with the next Day, if necessary, before the Motions.*

Nuttall v. Bracewell  
 Same v. Metcalfe  
 Metcalfe v. Nuttall  
 Crossland v. Woodhead  
 Edmonds v. Barnett

### ERRORS AND APPEALS.

*Thursday, April 20.*

#### FOR JUDGMENT.

Williams v. Jones (Ap., heard Feb. 8, 1865)

#### FOR ARGUMENT.

Sutton v. Great Western Railway Co. (E.)  
 Same v. South-eastern Railway Co. (E.)

Symons v. George (Ap.)  
 Harrison v. Great Northern Railway Co. (Ap.)  
 Hamet Harrison v. Same (Ap.)  
 Woodhouse v. Same (Ap.)  
 Gresham v. Same (Ap.)  
 Yar Bridge Co. v. Dore (E.)

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## THE JURIST.

LONDON, APRIL 22, 1865.

THE 34th section of the stat. 3 & 4 Will. 4, c. 27, for the limitation of actions and suits relating to real property, enlarged the effect of adverse possession, by making it operate to extinguish the title as well as the remedy of the once rightful owner. "At the determination of the period limited by this act to any person for making an entry or distress, or bringing any writ of quare impedit or other action or suit, the right and title of such person to the land, rent, or advowson, for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period, *shall be extinguished.*" It follows that after the lapse of the statutory period, the late owner regaining possession by any means is not remitted to his former title. (*Brasington v. Llewellyn*, 27 L. J., Ex., 297). In *Hanks v. Palling* (6 El. & Bl. 668), however, where a purchaser of a fee-farm rent was held bound by a stipulation that he should make no objection on the ground of the non-payment of the rent during the last twenty years, Coleridge, J., asked, during the argument, "Is the rent itself extinguished? Does sect. 34 do more than extinguish the right to sue for it? If, after non-payment for twenty years, a series of fresh payments were made, might not the old rent be said to exist without a fresh grant?" and the Court, in giving judgment, carefully avoided expressing an opinion on the effect of the statute. There seems to have been no need of such caution; for the previous clauses having barred the remedy, the 34th section has obviously no other object than to extinguish the right; and the language is unambiguous. Accordingly, in *The Incorporated Society v. Richards* 1 Drn. & W. 289, Lord St. Leonards said, "Under the new act, when the remedy is barred, the right and title of the real owner are extinguished." But he proceeded to add, "and are in effect transferred to the person whose possession is a bar." In saying that, however, we conceive that he went beyond the letter, and possibly beyond the meaning of the act, which has not made any provision for vesting the title of which it deprives the dispossessed late owner. A learned commentator thus states and illustrates the operation of the statute upon the title:—"The distinction between the right of possession and the right of property is now reduced to this—that though the right of possession may be in one person as against *strangers*, and the right of property be in another, yet the right of property can exist no longer as a mere right, but only in connexion with a right of entry at least. The present state of the law may be illustrated, by supposing that land is settled upon A. for life, remainder to B. in fee; that C. dispossesses A., and continues in possession for twenty years. Now, if A. be still living, his right is extinct, and the right of possession is *absolute* in C., for the life of A.; but if A. be dead within twenty years, then the right of C. is *defeasible*, being merely an apparent or presumptive right of posses-

sion, or that right which the law admits and protects till a better right is proved, while the true right of possession, or that right which flows from the right of property itself, is in B. If, in the state of circumstances last supposed, C. be dispossessed by D., a stranger, then C., having a right of possession as against all mankind except B., may recover the possession in ejectment from D. (3 Man. & R. 112, note); for to permit D., who has no colour of title to retain the possession against C., who has a *prima facie* title (see *Doe v. Penfold*, 8 Car. & P. 436, and *Doe v. Birchmore*, 1 Per. & D. 448), would be not merely to disquiet the possession without advancing the ends of justice, but possibly to do injustice, since the wrong of C. *may* have ripened into a right, while the wrong of D. is still recent and notorious. In the meantime the title is really in B., who brings ejectment against C., and recovers by force of a right superior to that which enabled C. to recover from D.—by force of the right of property itself. But if B. should neglect to bring his ejectment within twenty years from the death of A., then the statute would at once bar his right of entry, and extinguish his right of property, and thus, by a necessary consequence, confer upon C. an *absolute* right to the possession as against every possible claimant under the supposed settlement, for the bar to the now sole remedy would close the door against all but vexatious litigation; and the utter extinction of the right would deprive the late owner of every chance of the resuscitation of his title by any other means." (1 Hayes Conv. 268).

We conceive that the distinguished writer, from whom we have taken the above observations, is in error when he says, that if C. is dispossessed by D. while the right of entry is really in B., C. may recover the possession in ejectment from D. This would be contrary to "the well-established rule, that the plaintiff in ejectment must recover by the strength of his own title, without any regard to the weakness of the defendants." (2 Wms. Saund. 111 (a)). Of course, C. might recover upon proving his prior possession, as upon a *prima facie* title, if D. was unable to shew that the real title was elsewhere. (*Allen v. Rivington*, 2 Wms. Saund. 111; *Doe v. Dyeball*, Moo. & M. 346). The authorities cited by Mr. Hayes go no further. But though prior possession for any period, however short, may, if unexplained, be sufficient to establish a presumption of title, the defendant may rebut the presumption by shewing that the title is in another, as in *Doe d. Crisp v. Baker* (2 T. R. 749), where the lessor of the plaintiff entered into possession of a rectory house at Lady-day, 1787, under a lease by the rector, and remained in possession until the 17th March, 1788, when he was dispossessed by the defendant, who had no colour of title. On the trial, the defendant relied on the 13 Eliz. c. 20, which enacts, that "no lease of any benefice, &c. shall endure any longer than while the lessor shall be ordinarily resident, without absence above fourteen days in one year; but that every such lease, immediately upon such absence, shall cease and be void." The rector was wholly resident in another place. The Court, expressing their regret that such a possession as that of the defendant

should find a shield from an act of Parliament, the policy of which might then be much doubted, held, that though the defendant was a stranger and a wrongdoer, the plaintiff could not recover.

It is further to be observed, that the statement, that after twenty years' dispossession of A., the tenant for life, C., the dispossessor, is, during the remainder of A.'s life, absolutely entitled to the possession of the land, though it may be a legitimate deduction from the enactment that A.'s right and title shall be extinguished, has no counterpart in the language of the act. We think that C.'s title is not perfectly clear. The 34th section *extinguishes* the right and title of A., and does not profess to transfer it to the occupier. Indeed, Mr. Hayes proceeds to say—"We must not, however, confound the negative effect of the statute with the positive effect of a conveyance. In the example last considered, the rights of A. and B. do not become the rights of C., under a species of involuntary alienation effected by the statute. If that hypothesis were adopted, it would follow, that when the bar became complete as against the tenant for life, C. acquired a lawful estate *per autre vie*; in short, that when the land is in settlement, the adverse possessor would be from time to time invested with interests measured by those of the successive takers, whether chattel or freehold, and consequently be owner to-day of a short term of years, to-morrow of the fee. Such is *not* the operation of the statute. The wrongdoer must be considered, according to the principle of the OLD law, as claiming generally, and, therefore, as claiming the absolute property (unless, indeed, he expressly qualify his claim), and the statute as merely diminishing from time to time the danger of eviction, till at length his originally precarious fee becomes, by the exclusion of every stronger claim, a firm inheritance." This is, unquestionably, as far as it goes, a more correct statement of the effect of the act than that contained in the judgment of Parke, B., in *Doe d. Jukes v. Sumner* (14 M. & W. 42), that it "makes a parliamentary conveyance of the land to the person in possession after the period of twenty years has elapsed." The right and title of the tenant for life are extinguished, and not transferred. If they were transferred, they would be transferred with the charges on them. So that if A. were lessee for life at a rent (and if *Grant v. Ellis* (9 M. & W. 113) be right<sup>a</sup>), C. would not, under the notion of a parliamentary conveyance, be liable in debt for the rent as assignee. The estate of A. has determined: has not that determination of the particular estate accelerated the remainder? The remainder is all that is left of the fee, after deducting the particular estate; and a remainder must always have a particular estate to support it, although it is sufficient if the estate be a right of entry, without actual entry. (*Archer's case*, 1 Rep. 67 a.) The remainderman, then, being entitled, subject to the life estate, must have the right of entry when that life estate, which was the only impediment to his possession, has ceased, by whatever means; and a lessor who has parted with the right to the possession of his land

to a tenant for life, cannot be kept from re-entry after that right has ceased by a mere wrongdoer.

A further question may arise, where the legal estate is held upon an implied trust for A. for life, and then for B. in fee, and A.'s title is barred by an adverse possession, insufficient to bar the trustee, whether the trustee or the occupier or B. is entitled to the beneficial enjoyment during A.'s life. See *Dainty v. Brocklehurst* (3 Exch. 207), which illustrates the difficulty of the defendant's position in such a case in respect of evidence, but is not, as we read it, inconsistent with the authorities we have cited.

The question under consideration was discussed in the case of *Doe d. Carter v. Barnard* (13 Q. B. 945), where the lessor of the plaintiff proved that in 1815 Robert Carter purchased the premises, and was let into possession, but did not obtain his conveyance until 1824; that Robert Carter immediately after his purchase allowed his son John to occupy the premises rent free as tenant at will, which occupation continued until John's death in 1834 (leaving children), from which time his widow, the lessee of the plaintiff, occupied the premises until she was dispossessed in 1848, by the defendant claiming, under a mortgage made by Robert Carter in 1829. A verdict having been directed and found for the plaintiff, it was contended, that as Robert Carter's title was barred by adverse possession during thirty-one years, and as John Carter's possession had not continued for twenty years, so as to create a rightful fee in him transmissible to his son and heir, there was no one who had a succession title to the lessor of the plaintiff, whose priority of possession must prevail against the defendant. It was held that the plaintiff could not recover. Patteson, J., in delivering the judgment of the Court, said, "If she had been defendant in an action of ejectment, no doubt the non-possession of the lessor of the plaintiff, evidenced by her husband's and her own consecutive possession for more than twenty years, would have entitled her to the verdict on the words of the 2nd section of the act without the aid of the 34th section. (*Doe d. Goody v. Carter*, 9 Q. B. 863). Therefore it is said that the 34th section must have some further meaning, and must transfer the right. Probably that would be so if the same person or several persons claiming one from the other by descent, will, or conveyance, had been in possession for the twenty years. But this lessor of the plaintiff shewed nothing to connect her possession with that of her husband by right of any sort; and if she be right in her construction of the 34th section, the same consequence would follow if twenty persons unconnected with each other had been in possession each for one year consecutively for twenty years, yet it would be impossible to say to which of the twenty persons the 34th section has transferred the title. Without the aid of this statute, twenty years' possession gave a *prima facie* title against every one, and a complete title against a wrongdoer who could not shew any right, even if such wrongdoer had been in possession many years, provided they were less than twenty (*Doe d. Hardinge v. Cooke*, 7 Bing. 346); and the effect of the 34th section would probably be to give the right to

\* But as to this see 9 Jur., N. S., part 2, p. 315.

the possession for twenty years, even against the party in whom the legal estate formerly was, and, but for the act, would still be when he had not obtained the possession till after the twenty years; but then we apprehend, as before stated, that such twenty years' possession must be either by the same person or several persons claiming one from the other, which is not the case here.

"The lessor of the plaintiff must, therefore, rely on her own possession for thirteen years as sufficient against the defendant, who has turned her out, and shews no title himself." After observing, that such proof of possession would have shewn a *prima facie* title, if nothing else had been shewn, the Court added, that here "the lessor of the plaintiff did more, for she proved the possession of her husband before her for eighteen years, which was *prima facie* evidence of his seisin in fee; and that he died in possession, and left children, which was *prima facie* evidence of the title of his heir, against which the lessor of the plaintiff's possession for thirty years could not prevail; and therefore she has, by her own shewing, proved the title to be in another, of which the defendant is entitled to take advantage."

The case of *Doe v. Barnard* involves four propositions:—First, that the possession of land, for however short a period, is *prima facie* evidence of title in the possessor, available against a wrongdoer within a period of twenty years from the determination of the possession. Second, that the *prima facie* title shewn by possession may be rebutted by proof of a real or antecedent *prima facie* title in another. Third, that a *prima facie* defeasible title resting on possession may ripen into an indefeasible title by lapse of time, sufficient to bar any preferable, actual, or *prima facie* title. Fourth, that the *prima facie* title shewn by possession is a title to the fee, for otherwise Mary Carter must have succeeded.

Thus, if A., the rightful owner of the fee, is out of possession, and B. is in possession without title, B. is *prima facie* entitled to the fee, and cannot be turned out, except by A., or one having title under A. If B., having been wrongfully in possession as owner, say for two months, is dispossessed by C., a wrongdoer, who remains in possession for nineteen years and ten months, A.'s title will be barred at the end of that period; and then, if C. continues in possession, he may be ejected by B., his heirs or assigns; but in the meantime C.'s possession cannot be disturbed by B., but only by A. These deductions from the case of *Doe v. Barnard* seem to us to be consistent with general principles; and we think that the following remarks on the case by the learned editors of Smith's Leading Cases (in the note to *Napier v. Doe*, vol. 2, p. 582), are founded on a misapprehension of the effect of the demise, suggested, probably, by some expressions in the earlier part of the judgment, which were not material to the point actually decided, and were corrected in the concluding sentence which we have quoted. The editors say, that in *Doe v. Barnard*, "Although the title of the original owner was extinguished, there was, according to the decision, no parliamentary conveyance of the land to any other person. This, it need scarcely be remarked,

is a highly anomalous and exceptional result, and one which many will suggest a doubt as to the correctness of the decision which leads to it. The notion of land without an owner is inconsistent with the theory of real property in this country, and unless the Crown be entitled, which could not have been intended, the occupier at the time the original title expires seems to be the person in whom the right of property vests." We think we have shewn that no such anomaly as the existence of land without an owner is involved in the construction of the statute adopted in *Doe v. Barnard*, and that there is no necessity and no reason for adopting the conclusion that the statute, when it bars the title of the rightful owner in fee, transfers the fee to the person who happens to be in possession when the rightful title is extinguished. Such a state of the law might lead to most unseemly scrambles, and could be in no respect preferable to or more reasonable than that which we have deduced from *Doe v. Barnard*.

We may refer, in conclusion, to the case of *Hawkesbee v. Hawksbee* (11 Hare, 230), where a person who came into possession of a house as yearly tenant, having continued his possession for fifteen years without finding a person to whom to pay rent, devised the house to trustees, with power of sale, for the benefit of his widow and children. His eldest son occupied the house for fifteen years, paying rent to the widow, and after her death claimed to hold in his own right; but the Court, without deciding the question upon the statute, held, that the defendant, having got possession under the will, by paying rent to the widow, could not afterwards repudiate the testator's title.

### Court Papers.

#### EQUITY CAUSE LISTS, EASTER TERM, 1865.

\* \* \* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Damurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—Sh. Short.

#### Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.  
Galloway v. Mayor, Commonalty, and Citizens of the City of London (R., part heard, March 9)  
Ingle v. Goodwin (R., part heard, March 10)  
Alexander v. Joyce, V. C. of County Palatine of Lancaster (March 9)  
London and South-western Railway Co. v. Fitter (W., March 18), L. C.  
Walford v. Gray (S., March 22)

Green v. Crockett (S., March 27)  
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Phillips v. James (K., April 10)

#### CAUSES.

Baxendale v. West Midland Railway Co. (M D) L. C.  
Baxendale v. Great Western Railway Co. (M D) L. C.  
Simpson v. South Staffordshire Waterworks Co. (M D) L. C.

#### Before the Right Hon. the MASTER OF THE ROLLS.

#### CAUSES, &c.

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Conyers v. Beresford (M D)  
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India Freehold Land Colonisation Trust and Agency Association (Limited) v. Lascelles (D)

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Bloxsome v. Chichester (Cau.)

Cochrane v. Willis (Cause)

Cochrane v. Willis (Cause)

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#### Before the Vice-Chancellor Sir JOHN STUART.

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McLellan v. St. George's Harbour Co. (M D)

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Wriford v. Wriford (M D)

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Lambe v. Orton { (F C)

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#### Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

##### CAUSES, &c.

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Earl of Eglinton v. Lamb, Bart. (M D)

Fitch v. Cutts (Cause)

Smith v. Meadows (Cause, Witnesses), April 25

Wilson v. Kempe (M D)

Towns v. Wentworth (M D)

**Wood & an. v. De Mattos (Er.)**

## BOOKS RECEIVED.

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## THE JURIST.

LONDON, APRIL 29, 1865.

WE observe that the Courts have again had before them the curious learning depending on the alleged rule of our law, that there is no warranty of title in a sale of personal chattels. Perhaps, no portion of our law has year after year more startled and puzzled each succeeding set of students, or been more calculated to give them the impression, that law and reason may be two very different things, notwithstanding the law's proud assertion, that it is the perfection of common sense, i. e. the common law; for as to the poor statute law we are not aware that any such assumption is to be laid to its charge, and the perpetual snubbing it is always getting both from Bar and Bench, is not likely to encourage it in hoping for so great a distinction. Certainly, no portion of our law affords a better illustration of the effects of a perpetual struggle of our more recent judges to get out of the effects of an ill-advised doctrine laid down by their predecessors, without undertaking the responsibility of overruling it. The arch offender seems to be Noy, who boldly laid down in his *Maxims*, "If I take the horse of another man and sell him, and the owner takes him again, I may have an action of debt for the money; for the bargain was perfect by the delivery of the horse and caveat emptor." But strong as his proposition is, judges were found to recognise this doctrine, at all events to the extent of the case, where the seller did not know that he was selling another's property. Thus, in *Waller's case* (3 Rep. 22a.), one of the judges says, "If a man sells goods for money to be paid at several days, in such case, although the goods be taken by one who hath the right before the day, yet the seller shall have an action of debt in respect of the contract." In *Early v. Garrett* (9 B. & Cr. 928), Little Dale, J., says, "It has been held, that where a man sells a horse as his own, when in truth it is the horse of another, the purchaser cannot maintain an action against the seller, unless he can shew that the seller knew it to be the horse of the other at the time of the sale." And in *Ormerod v. Huth* (14 M. & W. 664), Tindal, C. J., said, as to the cases on false representation of title, "in each of those cases there was either an assertion of title embodied in the contract, or a representation of title, which was false to the knowledge of the seller." And even in discussing cases, where they acknowledged that the result should be the other way, the rule was acknowledged by different judges, though its consequences were evaded by holding, that the representation need not be in words, but might be implied from the surrounding circumstances attending the sale; and also in cases where it was held, that, from the peculiar circumstances of the sale (for instance, a sale by a sheriff or pawnbroker), there was no warranty, it was not held, that peculiar circumstances were necessary in order to prevent there being a warranty. So that in *Hall v. Conder* (2 C. B., N. S., 22) the Court, in delivering judgment, said, "Upon the whole, we may

safely conclude, that with regard to the sale of ascertained chattels, there is not any implied warranty, either of title or quality, unless there are some circumstances beyond the mere fact of a sale, from which it may be implied." Whilst the most said against it was said by Lord Campbell in *Sims v. Marryatt* (17 Q. B. 281), in remarking on the judgment of Parke, B., in *Morley v. Attenborough* (3 Exch. 500), "It may be that the learned baron is correct in saying, that on a sale of personal property, the maxim of caveat emptor does by the law of England apply; but if so, there are many exceptions stated in the judgment, which well nigh eat up the rule."

At last, in the late case of *Eschols v. Barnister* (11 Jur., N. S., part 1, p. 15), the point was raised distinctly, whether a mere ordinary sale in a shop carried a warranty with it. The Court decided that it did; but though they express themselves in terms most unfavourable to the alleged general doctrine, they do not take upon themselves to say distinctly that it is not law. Erle, C. J., said, "I decide in accordance with the current of authorities, that if the vendor of a chattel at the time of sale, either by words affirm that he is such owner, or by his conduct give the purchaser to understand that he is such owner, then it forms part of the contract; and if it turn out that, in fact, he is not owner, the consideration fails, and the money so paid by the purchaser can be recovered back;" and, citing a dictum of Lord Wensleydale, that a sale in a shop carries a warranty, decides it to be law. He then proceeds to consider the contention of the counsel of the defendant, that there is no warranty in the sale of a personal chattel; and after citing the passage in Noy's *Maxims*, says, "This at first sight would shock the understanding of ordinary persons; but I take the meaning of the principle which it inculcates to be, that where the transaction is of this nature, that I have the manual possession of a chattel, and, without my affirming that I am owner or not, you choose to buy it of me as it is, and to give me the money for it, you, the purchaser, taking it on those terms, cannot afterwards recover back from me the price you have paid, because it turned out that I was not owner." He passes in review the cases as to sales by a pawnbroker and sheriff, and the sale of a patent right, and continues—"In all these cases I think the conduct of the vendor expressed that the sale was a sale of such title only as the vendor had; but in all ordinary sales, the party who undertakes to sell exercises thereby the strongest act of dominion over the chattel which he proposes to sell, and would, therefore, as I think, commonly lead a purchaser to believe that he was owner of the chattel. In almost all ordinary transactions in modern times the vendor, in consideration of the purchaser paying the price, is understood to affirm that he is owner of the article sold." And after saying that it is so put both by Blackstone, J., and Lord Wensleydale, that the passage from Noy is only a dictum, and that it has always been cited only as such, winds up with the before-quoted observation of Lord Campbell. Byles, J., says, "It has been stated over and over again, that the mere sale of chattels does not involve

a warranty of title; but certainly such statement stands on barren ground, and is not supported by one single decision, and it is subject to this exception, that if the vendor, by his acts or by surrounding circumstances, affirm the goods to be his, then he does warrant the title;" and, after citing Kent's Commentaries, and a dictum of Buller, J.; concludes, in these words:—"Lord Campbell was right when he said, that the exceptions to the application of caveat emptor had well nigh cut up the rule." And Keating, J., says, "Whether the present case be an exception to the general rule, or form part of it, we do not controvert any decision, or even dictum, when we say, that, under the circumstances of the present case, there was a warranty of title," because the goods were sold in a shop; and, as to such distinction, says, it "may certainly be fine, and there may be a sale out of a shop by a person exercising a right of ownership over the article sold, in the same way as by a sale in a shop; but it is not necessary to decide that point."

We do sincerely hope, that, on the first opportunity that offers, one of our Courts, in a considered judgment, will definitely put an end to this state of things; in terms declare, that there is no rule of law that a sale of goods carries no warranty of title; and that, by the common law as well as by common sense, a sale of goods is an assertion of ownership and warranty thereof, unless there be something in the nature of the transaction to shew that the parties did not contract on that footing; as in the case, for instance, of a sale by a sheriff or a pawnbroker, who professedly do not sell goods which belong to them.

### Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—Statements appeared in the *Law Times* and the *Solicitors' Journal* of Saturday last, to the effect that the judges had, at a meeting held at Serjeants'-inn on Wednesday, the 19th inst., expressed themselves as disapproving of, and opposed to, the scheme of the Bar Committee, appointed to prepare a plan for the amendment of the present system of Law Reporting.

Personal communication has been had with some of the judges and serjeants present on the occasion, to ascertain whether the representations made by the papers I have referred to were correct, and, upon the authority of Lord Chief Justice Erle, who presided on the occasion, I am enabled to state on behalf of the Council of Law Reporting, that no judge expressed or intimated, either directly or indirectly, any disapproval of the scheme. On the same authority I am also enabled to state, that the Society of Serjeants'-inn declined to send a representative to the Council, on the sole ground, that as it was known that the influence of the judges predominated in that society, such an act might be regarded as intended to influence the profession, whereas the judges considered it to be their duty to abstain from all present interference.

As this is a matter in which the profession should not be misled by any inaccurate statement, whether made by inadvertence or design, you will, perhaps, be willing to allow this explanation to appear in the columns of THE JURIST. I am, Sir,

Your obedient servant,

JAMES T. HOPWOOD, Sec. pro tem.

3, New-square, Lincoln's-inn,  
April 27, 1866.

### REPORT OF THE COMMISSIONERS

APPOINTED TO PREPARE THE CODES OF THE LAWS OF THE STATE OF NEW YORK.

*To the Legislature of the State of New York.*

THE commissioners of the code, appointed by the act of April 6, 1857\*, having completed their labours, beg leave to make this their ninth and final report.

They have already reported, from time to time, the various steps taken by them in the progress of their work. Their duty, it will be remembered, as expressed in the act by which they were appointed, was "to reduce into a written and systematic code the whole body of the law of this State, or so much and such parts thereof as shall seem to them practicable and expedient, excepting always such portions of the law as have been already reported upon by the commissioners of practice and pleadings, or are embraced within the scope of their reports." This work was to be divided into three portions; one containing the political code, another the civil code, and a third the penal code.

The codes of civil and criminal procedure, as reported complete by the commissioners of practice and pleadings, were designed to embrace all the law of this State respecting remedies in the judicial tribunals, civil and criminal, including the law of evidence. There then remained the vast body of substantive law; that is to say, the law of civil rights and obligations affecting all the transactions of men with each other in their private relations, the law of crimes and punishments, and the law of government, including every branch of administrative and political action. This body of substantive law, the Legislature, by the act of 1857, declared should be contained in the three codes—political, civil, and penal, and to them the commissioners of the code have ever since devoted themselves.

Their first act was to prepare and report to the Legislature a general analysis of the codes projected by them. After this, their efforts were next directed to the preparation of the political code. This was divided into four parts. The first declared what persons composed the people of the State, and the political rights and duties of all persons subject to its jurisdiction; the second defined the territory of the State and its civil divisions; the third related to the general government of the State, the functions of its public officers, its general police and civil polity; and the fourth related to the local government of counties, cities, towns, and villages. The draft having been made, was distributed among the judges and other competent persons for examination; and after that the commissioners re-examined their work, and considered such suggestions as had been made to them; and the whole, as finally agreed upon by them, was reprinted and distributed to the judges and other officers before being presented to the Legislature. The political code, thus drawn and revised, was presented to the Legislature on the 10th April, 1860.

A few days afterwards, by an act passed on the 16th April, 1860, they were requested to prepare a book of forms adapted to the code of civil procedure. This duty was performed by them, and the required forms were submitted to the Legislature on the 30th March, 1861.

On the 5th April, 1862, the commissioners having prepared the draft of the civil code, distributed it to the judges and others for examination, and on the 2nd April, 1864, they in like manner distributed the draft of the penal code.

\* [The act directs the commissioners to prepare three codes—the political code, the civil code, and the penal code.]

Having re-examined these two codes, and considered such suggestions as had been made, they have finally revised and agreed upon them.

The penal code is herewith laid upon the tables of the members of the Senate and Assembly. The civil code is in the hands of the printer, and will shortly be completed, and in like manner furnished to the members of the two Houses. But as the term of office of the commissioners will expire before the close of the present session of the Legislature, it is not possible to make the required distribution among the judges, surrogates, and county clerks in time for the more formal presentation of the civil and penal codes to the Legislature for adoption.

The penal code thus prepared defines all the crimes for which, according to the law of this State, persons can be punished, and the punishment for the same. In preparing it the commissioners kept the following objects in view:—First, to bring within the compass of a single volume the whole body of the law of crimes and punishments; second, to supply deficiencies and correct errors in the present definitions of crimes; third, to make the relative degrees of punishment more nearly equal to the relative degrees of crime; and, fourth, to define and punish acts deserving of punishment, but not punishable by the existing law.

The civil code was required to embrace the laws of personal rights and relations, of property, and of obligations.

It has four general divisions—the first relating to persons, the second to property, the third to obligations, and the fourth containing general provisions relating to these different subjects. In the execution of this vast undertaking, the commissioners have endeavoured to bring together, and arrange in order, all the general rules known to our law upon the subjects contained within the scope of such a code, rejecting which are obsolete or unsuitable to our present condition, and adding such others as appeared necessary or desirable.

The first division, it will be seen, defines the civil condition of different persons in the State, adults, minors, persons of unsound mind, and Indians; enumerates their personal rights; declares their personal relations, under the various topics of marriage, divorce, husband, wife, parent, child, guardian, ward, master, and servant.

The second division contains the laws respecting property, real and personal, the various interests or estates therein, the modes of acquisition by occupancy, accession, transfer, will, or succession; the restrictions on alienation and accumulation, the conditions and qualifications of ownership; uses and powers; the making, interpretation, and execution of wills, and various special provisions relating to corporations, copyright, shipping, and the rules of navigation. The third division embraces the whole subject of obligations, whether arising from contract or the operation of law, their definition, interpretation, transfer, and extinction, whether by performance, offer of performance, prevention of performance, or otherwise; the object and consideration of contracts, the parties thereto, and their consent, whether freely given or obtained by duress, menace, fraud, undue influence, or mistake; and after these general subjects, the particular subjects are considered of sale, exchange, deposit, loan, hiring, employment, service, carriage, trust, agency, partnership, insurance, indemnity, suretyship, pledge, mortgage, lien, and commercial paper. The fourth division specifies the different kinds of relief afforded for the violation of private rights, and the means of securing their observance, whether compensatory, specific, or preventive, and the measure of da-

images, when compensation is the rule. This division contains also provisions concerning the special relation of debtor and creditor, and concerning nuisances, and enumerates and explains various maxims of jurisprudence.

In all this immense range of subjects, while it has been the general purpose of the commissioners to give the law as it now exists, they have kept in mind the injunction of the constitution to "specify such alterations and amendments therein as they shall deem proper." In obedience to this command of the organic law, they have specified various alterations and amendments which they consider proper to be adopted. These are mentioned in the notes to the different sections, where the reasons for recommending them are generally given.

For all these the commissioners beg leave to refer to the notes themselves. To detail them here would swell this report to an inconvenient length, and, therefore, three only will be mentioned. In the first division, the commissioners have endeavoured to secure the equal rights of married women in respect to their children and their property, abolishing at the same time both dower and curtesy; and they have introduced an article on adoption, by which they have provided that the substituted parent may have all the rights, and be subject to all the responsibilities, of the real one, who, having once voluntarily renounced his parental rights, should not be permitted to resume them when the affections have grown into the new relation. In the second division, the commissioners have aimed at an assimilation, to the utmost extent possible, of the laws of real and personal property, by reducing the law of real estate to the simplicity of personal, wherever it could be done without the disturbance of existing rights, establishing for both the same rules of succession.

The commissioners will not presume to think that, in the preparation of the codes, they have foreseen all the cases which can arise in the multifarious affairs of men, or that they have even collected all the general rules which have been announced from the bench in the past history of our law. Some may have been overlooked, some may have been omitted, from a mistaken belief that they were obsolete or inapplicable to our present condition, or were contrary to other rules of greater importance, that ought to be retained.

All that the commissioners profess is, that they have endeavoured to collect those general rules known to our law which are applicable to our present circumstances, and ought to be continued. They trust that they have arranged these rules in a manner which will be approved by the scientific student, while it will help the lawyer and the citizen to an easier, if not a better, knowledge of the law; and they flatter themselves, that for the unforeseen cases which are certain to arise, there are general principles, rules of interpretation, and analogies, which will serve as guides for judicial decision.

The question, whether a code is desirable, is simply a question between written and unwritten law.

That this was ever debatable is one of the most remarkable facts in the history of jurisprudence. If the law is a thing to be obeyed, it is a thing to be known; and if it is to be known, there can be no better, not to say no other, method of making it known than of writing and publishing it. If a written constitution is desirable, so are written laws. The same reasons which affect the one, affect also the other. There may be countries where the conflicts between the different orders in a State render a written definition of their relative rights a difficult or an impossible task; and there, of course, a written constitution is not

likely to be attempted; and because a written constitution is not thought desirable, written laws are supposed to be undesirable. These reasons have no application to this country. We have no orders in the State, no classes of society clashing with each other. The will of the people is the supreme law; that will is fitly expressed by their written constitution and their written laws. It should seem, indeed, to have no other fit expression.

There are those who argue, that an unwritten law is more favourable to liberty than a written one. The contrary should seem to be more consonant with reason. It can scarcely be thought favourable to the liberty of the citizen, that he should be governed by laws of which he is ignorant, and it can as little be thought, that his knowledge of the laws is promoted by their being kept from print, or from authentic statement in a written form.

Whatever is known to the judge or to the lawyer can be written, and whatever has been written in the treatises of lawyers, or the opinions of judges, can be written in a systematic code.

It is no answer, to say that nothing can be written which will not be susceptible of different interpretations. That may be true. But it is no more susceptible of different interpretations when written in a code, than when written in the reports. On the contrary, when expressed with care, for the very purpose of stating a rule which is to govern all cases alike, there is more likelihood of precision in language than when expressed with reference to a particular case.

For these eight years the commissioners have been engaged in the preparation of the codes with which they were charged by the Legislature of 1857. The task which they undertook was untried and difficult. No code of the common law of America or of England had ever before been attempted. How they have acquitted themselves it is not for them to say. Their work is before the Legislature and the people. If it shall effect half the good which the commissioners have ventured to hope from it, and the thought of which has cheered them through their long task, they will be rewarded.

The codes which the commissioners have thus prepared, together with the codes of civil and criminal procedure heretofore submitted by the commissioners on practice and pleadings, complete that work of codification which was contemplated by the constitution of 1846; and when the same shall have been considered and sanctioned by the Legislature, the people of New York will have the whole body of their laws in a written and systematic form, as full, at least, the commissioners venture to think, as the code of any other people.

In the last months of their service, when their task was well nigh ended, and while the sheets of the civil code were passing through the press, one of the members of the commission was taken away by death. On the 25th December, 1864, after an illness of two days, Mr. Noyes died, to the inexpressible grief of his associates; having been suddenly struck down in the fullness of life, leaving to the surviving commissioners the mournful duty of signing their names, without his, to this last report of their common labours.

All which is respectfully submitted.

DAVID DUDLEY FIELD.  
ALEX. W. BRADFORD.

New York, Feb. 13, 1865.

### BOOK RECEIVED.

A Compendium of English and Scotch Law, stating their difference. With a Dictionary of parallel terms

and phrases. By James Paterson, Esq., M.A., of the Middle Temple, Barrister-at-Law, author of "The Fishery Laws," "The Game Laws," &c. Second Edition. Royal 8vo., pp. 640.—A. & C. Black.

### Imperial Parliament.

#### HOUSE OF COMMONS.—Monday, April 24.

##### DUTY ON ATTORNEYS AND SOLICITORS' CERTIFICATES.

Mr. *Denman* postponed the motion which stood in his name for this evening, for the abolition of the annual duty upon certificates taken out by attorneys, solicitors, and proctors in England and Ireland, and by writers to the signet, solicitors, agents, attorneys, and procurators in Scotland, until Friday, the 19th May.

##### THE BANKRUPTCY ACT, 1861.

Mr. *Murray* asked the *Attorney-General* whether it was intended to introduce in this session any bill to carry out the resolutions reported to the House by the select committee appointed to inquire into the working of the Bankruptcy Act, 1861.

The *Attorney-General*, considering the magnitude and importance of this subject, did not think it possible to give any engagement on the part of the Government that a bill would be introduced during the present session. All he would undertake to say was, that the recommendation of the committee would, without any loss of time, receive the best consideration of the Government, with a view to introduce, as speedily as possible, such a measure as it should seem to them expedient to adopt.

#### Tuesday, April 25.

##### CHARITABLE TRUSTS FEES BILL.

Mr. *Hankey* moved the second reading of this bill. He thought that the expenditure involved in the working of the Charity Commission should not be wholly charged upon the taxation of the country. It did appear to him that the charities should bear the expense of such business as was formerly done by the Court of Chancery at a great expense, but was now transacted by the commissioners. In every other case litigants, or those who resorted to a court, paid the expense of the proceedings; but in this case the charities were totally exonerated from expense, which was thrown entirely upon the nation. He did not think that this was right; and the object of the present bill was to establish a juster system, by imposing a scale of fees upon the business transacted by the commissioners for the charities throughout the country. The nation at large was not interested in the business done on behalf of local charities; and it was, therefore, contrary to sound policy that the nation should bear the expense. When Lord Lyndhurst brought in the bill establishing the Charity Commission, he intended that the system should be self-supporting. And when it was resolved to throw the expense upon the nation, it was supposed that this could never exceed 5000*l.* per annum. But, as a matter of fact, the annual expense was now 20,000*l.*, and this was an increasing item. Why should not that expenditure be borne by those who were really interested in and benefited by the action of the Charity Commissioners, whose advice and assistance were of the greatest assistance to the charities?

Sir *M. Peto* moved that the bill should be read a second time that day six months. He thought that the cost of a department of the Government should be borne out of the taxation of the country, and should not be charged upon the charities. A question of this kind should be dealt with by the Government, if it were to be dealt with at all. The hon. member had entirely failed to shew that there was any real necessity for such a measure, which aimed at imposing a tax upon the poorest classes of the community.

Mr. *Selwyn* seconded the amendment. The bill seemed to be objectionable in detail, more objectionable still from the circumstances under which it was introduced, and most objectionable of all in principle. It was needless to trouble the House about the details of the measure; but he thought some credit was due to the hon. member for the ingenuity with which he managed to evade the objections to a private member introducing a taxing bill. The provisions of the bill were

indefinite and incomprehensible, and the measure was further objectionable from the fact that it proposed to impose a tax upon the poor inmates of charitable institutions at a time when they were all looking forward to a remission of taxation.

Mr. F. S. Penell opposed the bill.

Mr. Bruce said, that although he wished that his hon. friend would not press the bill to a division, yet he could not agree in the arguments which had been urged against it. There was much in the bill which had already been recognised by the greatest authorities on both sides of the House. Under the bill introduced by the late Lord Lyndhurst when Lord Chancellor, the expenses of the commission were to be borne by the charities. The bill introduced by Lord Cranworth in 1851 contained provisions similar to those of the present bill. It appeared to him to be an intelligible principle that a portion of the expense connected with the management of charities should be chargeable upon the charities. But this bill proposed that the larger portion of the expenditure should be borne not by the charities which had profited by the management of the commissioners, but by those who acted in accordance with the act of Parliament, and sent in their returns. The greater portion of the cost would be thrown upon charities for doing that which had been made necessary for the purpose of supplying information to Parliament. The whole question was one which would have to be dealt with by the House in a comprehensive spirit sooner or later; for it could not be denied that, while many charities were useful, there were others of which it might be said that they were mischievous. He hoped his hon. friend would consent to withdraw the bill.

The bill was then negatived without a division.

#### THE REPEAL OF OBSOLETE ACTS OF PARLIAMENT.

In reply to Mr. Hadfield,

The Attorney-General said that a bill was in preparation for the repeal of obsolete acts of Parliament, and, if possible, would be introduced during the present session of Parliament.

#### THE OXFORD UNIVERSITY (VENERIAN) TEST BILL.

After a few words from Mr. Neate, this bill was read a second time.

The Mortgage Debentures (on recomittal) Bill was passed through committee.

A resolution on the subject of Mortgage Debentures Stamps, and also a resolution respecting Land Debentures Stamps, passed through committee.

The Greenwich Hospital Bill and the Railway Classes Bill were severally introduced and read a first time.

Wednesday, April 26.

#### INNS OF COURT BILL.

Sir G. Bowyer, in moving the second reading of this bill, said that the benchers of the Inns of Court exercised a very important jurisdiction of a criminal nature. They had power to hear and determine complaints and charges against their own members; to refuse admission to their Inn of Court; they could, after a student had complied with all the regulations of the house, refuse, upon charges against his character, to call him to the bar, thus inflicting on him very severe punishment, and stigmatising his character; they could also expel members. But the most important power was that of disbarring; that was to say, expelling from the legal profession barristers, even though they had the rank of Queen's counsel. Such a jurisdiction ought to be exercised by a tribunal every way qualified to discharge such functions. The jurisdiction in these cases was exercised by the whole body of the benchers. Lincoln's-inn had 60 benchers; the Inner Temple 45; the Middle Temple 36; and Gray's-inn 20. Cases heard before such numerous bodies as these could not be satisfactorily disposed of. In the first place, the tribunal was necessarily a shifting one. The same cases were heard by one set of benchers on one day, and by another set of benchers on another. Not long ago it was shewn, that in a case in which a member of that House was concerned, on each day of the trial there was a great variation in the court—A. and B. hearing it on one day, C. and D. the next, and so on all through the alphabet; and that some of the benchers who determined the case were not present at all during the hearing. It was said, indeed, they had an opportunity of reading the shorthand writer's notes; but that was not a satisfactory state of things. There were other objections to the present tribunal.

One was, that the benchers had no power to administer an oath; another was, that they had no power to compel either the attendance of witnesses or the production of documents. An important case, illustrating the necessity for the first of those powers, occurred some years ago. Mr. Whittle Harvey was refused his call to the bar. The same case was afterwards brought before a committee of that House, composed of very distinguished members. The committee held that Mr. Whittle Harvey was entitled to be called to the bar, and they recorded in their report the reason why they had come to a different conclusion from that of the benchers, viz. because they had the power of compelling the attendance of a particular witness, whereas the benchers had not. Again: when a charge was made, the accuser went before the benchers with his evidence and his case prepared, but the defendant must request it as a favour that his witnesses would come forward on his behalf, as there was no power of compelling them to do so. But another power essential to the administration of justice, which the benchers did not possess, was that of committing for contempt, and maintaining the order of their proceedings. During a late important investigation before an Inn of Court, a witness having got possession of a document that was before the court, refused to give it up. The benchers had no remedy. The police were called in, and the result was, that the judges and the parties all went before the inspector of police at the station in Fleet-street. He proposed that instead of cases being heard before the whole body of the benchers, the benchers should have power to select a judicial committee for their determination, and that such judicial committee should be armed with all the powers that belonged to a court of law—that it should be able to administer an oath, to compel the attendance of witnesses and the production of documents, and also to punish for contempt. Last year he introduced a bill very similar to the present one, but he had sought to obviate the objections that were raised to the former measure. He proposed to leave it in the option of the benchers to refer or not refer cases affecting discipline to a judicial committee. But he proposed that they should not be allowed to exercise the highly penal powers of refusing admission to the inn, of expelling from the inn, of refusing to call students who were entitled to their call, and of disbarring, except through the medium of a judicial committee. His bill provided, that if both parties concurred the case might be heard in private; but that, unless both concurred, it should be heard in public.

Mr. Roebuck, in seconding the motion, said he thought the bill an exceedingly good one. The former attempt of his honourable friend at legislation on that subject was of a different character, and he had been quite prepared to oppose it. The present measure, however, would give such powers to the Inns of Court as they now wanted, and as would render them what they ought to be—an efficient judicial tribunal. He must add, that when the bill came into committee he should invite the consideration of the Attorney-General to one of its clauses, by which it was provided, that the Inns of Court should be allowed to choose five persons as a judicial committee, power being reserved to the individual charged to challenge three of them.

Mr. Locke did not think any case had been made out for this bill, and moved, as an amendment, that it be read a second time that day six months.

Mr. Neate seconded the amendment, because he considered it desirable that the whole constitution and powers of the Inns of Court should be made the subject of comprehensive legislation.

The Attorney-General did not offer any objection to the second reading of the bill, without, however, committing himself as to the course he should take if it reached a later stage without amendment. He felt regret that the Inns of Court had not taken a clear and decided course in this matter, in order to assist the House in coming to some definite conclusion. He thought it was not satisfactory that this matter should be divorced from other important questions relating to the same subject. He referred to the Commission of 1854, and to what had since been done. They had not moved with very great rapidity; yet these learned societies had shewn, at least, a very considerate and zealous disposition to make important improvements in the direction pointed out.

Sir G. Bowyer replied.

Mr. Locke withdrew his amendment, and the bill was then read a second time.

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LONDON, MAY 6, 1865.

It is much to be regretted that the useful operation of the act of 1854, giving power to the Courts of common law to allow interrogatories to be put to the parties in an action at law, should have been in any degree lessened by conflicting views as to the interpretation of its terms; but there are few subjects on which more doubt has been felt, or on which the decisions by the Courts have differed more frequently, or by nicer shades, than on the questions, whether the right to interrogate is confined to those matters as to which a discovery may be sought in equity; and whether, if it is so confined, the objection to any interrogatories that infringe the rule, more especially as to questions which have a tendency to criminate the party interrogated, is, in the first instance, to the interrogatory, against its being allowed to be put at all, or arises on the refusal to answer, after the ten days given by the statute to answer by affidavit have elapsed. The differences of opinion that have existed on these questions amongst the learned judges, whose office it is to declare the law, have proved to be a source of serious expense to suitors, and of great difficulty to practitioners engaged in advising on such matters. Soon after the passing of the Common-law Procedure Act, 1854, an opinion very generally prevailed that the statute intended that the party might be interrogated without reference to the rules of equity as to discovery, and that the same questions might be put as if the party were under examination as a witness at the trial of the cause. In *Osborne v. The London Dock Company* (10 Exch. 698), a case where the interrogatories proposed, manifestly had a tendency to criminate the party to whom they were addressed, the Court of Exchequer decided that the questions might be put; and, on counsel arguing that discovery in sect. 51 meant such discovery as could be had in equity on a bill of discovery, Baron Parke observed, that the language of the 51st section was much more extensive in its signification, and had no such limitation as that contended for. That the 50th section, which empowered the Court to order the production of documents, said that it should be done upon the affidavit of the party applying for the document, to the production of which he was entitled, for the purpose of discovery, or otherwise; and that the 51st section said that the party might be interrogated as to any matter as to which discovery might be sought. That it did not say that the power was limited to cases in which a bill of discovery would lie; and Baron Alderson observed, that the proceeding was analogous to that of the examination of a witness at the trial; and that it therefore seemed to him that the same rule should be followed; Baron Parke adding—"The plaintiff must be put upon his oath, and, when he finds any question presses him, he must object to it." And Baron Alderson then proceeds to point out at some length, that the party has ten days given him by the act to determine whether he will

answer the interrogatories; and that if he refuse, then an oral examination may be directed; and that when the question is put to him orally, he may then object, that he believes it has a tendency to criminate him. The case of *Whately v. Crowter* (5 El. & Bl. 709) followed at a very short interval, and there it was evidently taken to be the practice, as a general rule at all events, that if interrogatories were objected to, the course was to consider and determine the objection at once, on the application for interrogatories, and not to have the questions put, and allow the party interrogated ten days to determine whether he should answer them or not. And, with regard to discovery, the Court of Queen's Bench appeared to be unanimously of opinion that it meant such discovery only as could be had in equity; and Lord Campbell, in giving his judgment, said that the object of the enactment was to obviate the necessity of commencing a fresh suit in a court of equity, for the purpose of obtaining a discovery in aid of an action at law: that to effectuate that, it had been enacted, that by leave of the court or a judge, a party to a suit might deliver interrogatories in writing upon any matter as to which discovery might be sought: that it was too wide an interpretation to say, that every question might be asked on interrogatories which might be asked if the party were a witness at the trial, and that he, Lord Campbell, thought that interrogatories must be confined to matters which might be discovered by a bill of discovery in equity. The same views were adhered to in *Edwards v. Wakefield* (6 El. & Bl. 468), as the following extract from the judgment of the Court shews:—"We think that we ought, at all events, to hold that discovery, under the 51st section, is limited by the words 'upon any matter as to which discovery may be sought,' to the cases where a discovery could be given in equity." And in *Moor v. Roberts* (2 C. B., N. S., 671), which followed in the Common Pleas, the views expressed by the Court of Queen's Bench were brought forward in argument, and do not appear to have been dissented from by any of the judges of the Common Pleas. And though the interrogatories were in that case refused, without any distinct reference to the rules of equity as to discovery, Chief Justice Cockburn observed, that the obvious intention of the 51st section was to supersede the necessity of recourse being had in all cases to a court of equity, for the purpose of aiding by discovery the proceedings in an action at common law, and to give the courts of common law power to afford the same sort of assistance to suitors there. After these cases there came, at a long interval, the case of *Tupling v. Ward* (6 H. & Norm. 749), which was an action for libel, and in which the plaintiff had proposed to interrogate the defendant as to his being the author of the libel, and the Court of Exchequer was pressed by the previous decision of the same court in *Osborne v. The London Dock Company*; and it was urged, that, on the interpretation there put on the statute, the party interrogated might have questions put to him, as if he were being examined at Nisi Prius; and *Boyle v. Wiseman* (10 Exch. 647) was cited, where it had been held that a party to a suit cannot object to be sworn and examined at the trial,

on the ground that the only relevant question which could be put to him would tend to criminate him, but that he must be sworn, and on his oath claim his privilege. The Court, however, refused to allow the interrogatories to be put, not apparently as following any rule of equity as to discovery, but as in the exercise of a discretion given them by the statute; and Martin, B., in delivering the judgment of the Court, said, "We are all of opinion, that in the exercise of the authority and discretion given to us by the 51st section of the Common-law Procedure Act, 1854, such interrogatories ought not to be allowed. It was scarcely contended that the defendant was bound to answer them; but it was urged that the interrogatories ought to be administered, leaving the defendant to refuse to answer if he thought fit. Without laying down any general rule on the subject, we think that, in cases of this kind, it would be unfair to permit a question which the party is clearly not bound to answer; the object being either to compel him to answer when not bound, or to refuse, and so create a prejudice against him. We, therefore, think these interrogatories ought not to be allowed." This case, therefore, restricted that width of interpretation animadverted upon by Lord Campbell, which gave the rule, that every question might be put to a party on interrogatories which might be put to him as a witness under examination at the trial. The wider interpretation was, however, reverted to by the Court of Common Pleas in the case of *Bartlett v. Lewis* (31 L. J., C. P., 230), where there was a long string of interrogatories, some twenty-nine in number, tending to impute to the defendant fraudulent concealment and felony under the bankrupt laws, and which were allowed, the questions being such as might have been put to the defendant had he been called as a witness at the trial. And Chief Justice Erle said—"It is clear that these are questions which might be put to the defendant if he were in the witness box; and there he would be bound, if he desired to protect himself against answering them, to pledge his oath that they tended to criminate him;" and Mr. Justice Willes also expressed his opinion that the party to whom interrogatories are administered is placed in the same position as a witness at the trial; and he explained that *Tupling v. Ward* probably did not amount to more than that, under the peculiar circumstances of that case, the Court would not allow the interrogatories to be put. Both Chief Justice Erle and Mr. Justice Willes also expressed a strong opinion that the courts of law were to administer justice in the matter of interrogatories by analogy to their own proceedings, and not by analogy to those of courts of equity. It would appear that Mr. Justice Byles concurred in allowing the interrogatories mainly in deference to the case of *Chester v. Wortley* (17 C. B., N. S., 709), which he considered to be in point, and to the opinion of the other members of the court. The Court of Common Pleas, however, in the still more recent case of *Stern v. Sevastopulo* (32 L. J., C. P., 268), in an action of slander, where the words alleged to have been spoken contained several wide imputations against the character of the defendant, refused to

allow interrogatories which went to charge the defendant with being guilty of the slander, although it was urged that the questions were such as might have been put to the defendant as a witness at the trial; and, in resisting that argument, the Court fell back on the principle enunciated in *Tupling v. Ward*, that the Courts have a general discretion in the matter of interrogatories; and the Court of Common Pleas has, therefore, in effect, now added the weight of its authority to that of the Court of Exchequer, that some restriction must be placed on that width of interpretation complained of by Lord Campbell, and which gave as the rule, that a party might be interrogated as if he were a witness in the box. We add to this, that the Court of Queen's Bench has just recently held, in the case of *Pye v. Butterfield* (11 Jur., N. S., part 1, p. 226), that, in the exercise of the powers conferred by sect. 51, in allowing interrogatories, the Court will take as a guide the rules and principles acted upon in the courts of equity as to "bills of discovery," although it will not consider itself to be fettered by those rules. We cite the following passage from the judgment of Chief Justice Cockburn:—"In the exercise of the powers recently conferred upon this Court, it seems to me that we ought to be governed by the principles which have been recognised in the courts in which this branch of our jurisprudence was originally planted, nurtured, and has grown up. This power was given to us in order that the complication of business caused by the necessity of having recourse to other courts should be prevented; and when the Legislature gave us such power, it must be taken to have done so with the knowledge of the rules according to which the power has been administered in those other courts; and, therefore, whether we are free to exercise our own discretion, or whether it was intended that we should act in accordance with the courts of equity, I think we ought to abide by the principles and rules of those courts." The result of all these cases, taken as a whole, appears to be, that the Courts have a general discretion in the matter of interrogatories—a general discretion which will always be ready to prevent the too rigorous application of any previous definition of their powers, and which will be guided and governed, though never absolutely controlled, by the principles of equitable discovery. And with regard to questions which have a tendency to criminate, we think it may now be said that the inclination of the Courts is to disallow, in the first instance, interrogatories which manifestly are such as the party sought to be interrogated is not bound to answer. It was on that principle that *Tupling v. Ward* and *Baker v. Lane* (11 Jur., N. S., part 1, p. 117) were decided in the Exchequer; and *Stern v. Sevastopulo* in the Common Pleas, went very near to the same. And such we apprehend is to be a sound rule of practice; it avoids the inconsistency of the Court ordering the party to answer that which he manifestly is not bound to answer; it prevents the possible delay of waiting ten days, and then having the party orally examined, if he takes the course of simply not answering; it saves the additional cost of a second inquiry; it not only prevents delay, and saves expense, but also arrests those shafts prepared in the closet,

apart from that moral control of a public audience, which checks the tongue of the boldest advocate in open court—shafts which too frequently are aimed without any other object than to annoy and intimidate, and only serve that mischievous purpose.

### THE LAW MAGAZINE ON LAW REPORTING.

THE new number of the *Law Magazine* contains an interesting article on the Legal Position of the Church of England, and an heretical essay on Criminal Responsibility, which we may take another opportunity of noticing. Our present business is to make some extracts from an able paper on the Bar scheme for the amendment of the present system of Law Reporting, in which we think that the present position of the question, and the interests of the profession with regard to it are very fairly discussed:—

“The danger that has first to be encountered is the fear that the attempt to establish the proposed set of reports may increase the present evils, by adding another to the six existing sets. The scheme endeavours to avoid this danger, by proposing what, in effect, would be a fusion of all the existing regular reports, consisting at present of no less than fifteen independent publications, costing in the aggregate about 30*l.* per annum; the Chancery series alone costing at least 11*l.* This fusion, if it could be accomplished, would, without question, be a result in itself worth the struggle; but its success must, we conceive, depend upon the consent of the reporters. The publishers, we believe, care but little for the regular reports; the circulation has become so diminished through the effect of competition, that there is but little profit to be made out of them now-a-days, and the reporters have become the persons chiefly interested. Can the consent of the regular reporters be procured? It is hardly to be expected that parties in their position will disclose the real extent and value of their interests, and we do not see that the council have means at their disposal for overcoming anything like a general or combined opposition. In fact, as the scheme proposes (rule 11) (though this proposal is not specially noticed in the address), that the appointment of reporters should be subject to the approval of the chief presiding judge, it may be taken for granted that the judges, as a body, would not sanction appointments made in disregard of the interests of the present reporters. The council must, therefore, in the first instance, deal with the existing reporters. And it seems to us that their consent can only be expected, if it be made reasonably clear that their interests will be advanced by the change—assuming, of course, their ability and willingness to discharge the duties in the manner which will be required under the proposed system. To enable the council to do this, they must depend upon obtaining, as a preliminary, the support of the profession to a large extent. The address does not, indeed, in express terms, speak, as the scheme does, of the interests of the regular reporters being the first to be considered. It speaks rather vaguely of the establishment of one set of reports upon the basis of a fair regard for existing interests. This might imply an intention to disregard the regular reporters, and might point to an arrangement with the *Law Journal*; but we have no doubt that the intention of the address is to carry into effect the precise recommendations of the scheme, and that, for the reason we have given as to the approval of the judges being necessary, any other course would be impracticable. It may,

therefore, be concluded, that if any regular reporter should be left out, it would only be in consequence of his own unreasonable refusal to come in. In arrangements which are proposed for the benefit of the profession and the public, obstructions by individuals on the mere ground of private interest, would hardly be recognised by the judges or the profession as the legitimate exercise of a right; and though we cannot conceive that any regular reporter would prove merely obstructive, yet if such a case should occur, we think he ought not to be considered as entitled to stop the scheme by his veto, nor ought he to complain if he is left to make himself conspicuous by his absence. It may be an unpleasant truth, but the fact is not to be gainsaid, that if the profession came forward in sufficient numbers to establish the scheme, subscription to the proposed reports would probably imply withdrawal of subscriptions from all others, and we do not know of any existing series of regular reports that could be profitably continued after a permanent withdrawal of even 500 subscribers. The scheme not only contemplates, as we read it, the fusion of the regular reports, but also (rule 26) provides that arrangements may be made by the council, which, for an adequate consideration, shall lead to the discontinuance of any existing set of reports. This, we imagine, is intended to apply to the *Law Journal*. The weekly series are not, and do not profess to be, of such a character as could be properly dealt with by the council with a view to the establishment of a permanent series. A fusion or amalgamation of the regular reports and the *Law Journal* would, in our judgment, be a most desirable thing for the profession and the public, and the council would, no doubt, act wisely in striving to accomplish it, if in their power. But here the practical difficulties will probably be greater than with the regular reporters. The *Law Journal* has become a successful commercial undertaking, and is now yielding a larger profit to its proprietors than, we believe, any other set of reports, and these parties cannot be expected to sacrifice themselves for the public good. We do not see our way to suggest any definite plan which would be satisfactory. The purchase of the proprietary interest, by payment of a sum down, would be out of the question. The scheme (rule 26) appears to limit the consideration to be paid for the relinquishment of any set of existing reports to a payment, during a limited period, out of profits, to be postponed to payment of the necessary expenses of printing, sale, and management, and the guaranteed salaries of the reporters. The payment of a consideration in such a mode is one to which the proprietors of the *Law Journal*, in its present state of financial prosperity, would be naturally unwilling to submit. At the same time, there are considerations affecting the position of the *Law Journal* which cannot be lost sight of. As a commercial property, it must be subject to all the risks and contingencies which affect the commerce in which it is engaged. If the interests of the profession and the public require that a radical change be made in our system of law reporting, by substituting professional control for commercial management, the consequences of that change, whatever they be, must be submitted to by the *Law Journal*. The profession and the public have a right to require to be served in the manner which they deem best for their own interest, and those who desire to profit by serving them must be guided by events as they arise. If the *Law Journal* resolve, as possibly it may, to stand aloof, let us consider what may happen. The proposed reports would be more complete and comprehensive than those of the *Law Journal* now are, or, with reporters inadequately remunerated, ever could be. Not only will they comprise the reports of

all the courts, including the appellate, but they will be so conducted, if we rightly understand the scheme, that the decisions of the year shall, as far as practicable, be published within the year—a result never yet attempted by the *Law Journal*, or any other set of reports; but a result easily attainable under a management which does not seek to realise a trade profit; for it is plain to our minds, that when a case has been argued and decided, it is ready to be reported; and we are satisfied, that under a well-arranged system of reporting (of which adequate remuneration to reporters would be an essential element), the proper preparation of the report need not involve a long interval of time, though it would involve the personal attendance of the reporter throughout the argument and the judgment, together with prompt and convenient access to all necessary papers. The *Law Journal* is, beyond all doubt, a valuable publication, so far as regards its reports of cases in the courts of common law, but it is not considered to be equally so as regards its reports of cases in the courts of equity, or the appellate courts. This fact is notorious; and the dissatisfaction that is felt by practitioners in equity at the deficiencies of some, at least, of the regular Chancery reports, and the character of the equity reports in the *Law Journal*, may have led to the impression, which we know has been felt in some quarters, that the recent movement was only that of the equity bar, and was not supported by the common-law bar. In making these observations as to the *Law Journal*, we are only referring to facts, as they affect the public interests. The reasons for these facts are equally notorious with the facts themselves. In the common-law courts the *Law Journal* has the advantage of access to, and the use of, the judges' written and revised judgments; but it does not enjoy the same advantage, to the same extent, in the courts of equity. In these courts, as a rule, the judges only communicate their written and revised judgments to the regular reporter of their respective courts. This want of uniformity in the practice may well account for the different degrees of merit in the reports. If the proposed set were established and maintained according to their contemplated completeness and efficiency, a prejudicial effect might be produced, if not upon existing, at all events upon new, subscriptions; and a prudent regard for the probabilities and possibilities of the future would be matter of present concern to those interested in the *Law Journal*. Another consideration presents itself which should not be lost sight of. In the proposed scheme two important principles, the one dependent on the other, lie at the foundation of the difference between the existing and the new system—we mean the liberal remuneration of reporters, and the exclusion of all commercial profit. Experience seems to have shewn that, under a system of competition, the two cannot exist together. Now, in considering the amount of compensation to be paid for any proprietary interest, the question would have to be asked, how far are its profits affected by the amount of remuneration paid to its reporters? Could it fairly be expected of the profession, that they should pay a large compensation for trade profits which are realised at the expense of one class, and to the injury of the other.

The difficulties which beset the question are obviously many and great, but they spring naturally and legitimately from the interests which have to be dealt with. They will not be avoided by shutting our eyes to them. They lie in the path, and must be surmounted. The mode of surmounting them will, we think, be aided by discussion; that they are capable of being surmounted by mutual moderation and fairness, we are satisfied; that it is for the interest

of the profession that they should be surmounted, we are satisfied also. And it lies with the profession itself to supply the means of surmounting them. If the profession generally feel the evils of the existing system, and, approving the proposed change, desire to see it brought about, their course is to support the council in the manner proposed, and means adequate to accomplish the object would be thereby at once brought into existence."

We think that the case in favour of the scheme of the bar committee is very fairly stated in the above extract; and it remains for both branches of the profession to consider whether or not it is their case. If they come to the conclusion that it is, now is the time to conquer their proverbial inertia, and to act promptly and energetically, for it is certain, that if the very great and disinterested efforts which have been made, and are being made, by the promoters of this most important reform, should now meet with a check, no fresh attempt will be made in the present generation, and for an indefinite time the profession must continue to endure the evils of the present most absurd practice.

The writer proceeds to draw, from a trumpety attempt on the part of the persons interested in the most recently established of the unauthorised reporting nuisances, viz. the *New Reports*, to advertise that publication, an inference which may involve some degree of truth, but which is not justified by the transaction in question. The dispute has since been taken into the Court of Chancery, and laughed out of court; it appearing that the sole ground of complaint on the part of the *New Reports* was, that in a long report of a case of *Graham v. Wickham*, before the Lords Justices, the reporter on behalf of *The Jurist* (whose original notes in short-hand of the arguments and judgments in the case were produced), finding that the report in the *New Reports* of the judgment of Lord Justice Turner was substantially the same with his own notes, had used the printed report of that judgment to abridge the labour of transcribing his short-hand notes, and had subsequently lent his manuscript so prepared to the gentleman who supplies the *Law Times* with reports of cases in the Court of Appeal in Chancery.

On this, the writer in the *Law Magazine* makes the following remarks:—

"The three reports would, upon perusal, appear to be what they profess and ought to be, the separate and independent reports of the several barristers under whose names they were published, and thereby accredited as authority. We are satisfied that no one reading the three reports, if he had occasion to do so, would, from the reports themselves, be led to suppose they were other than what they purported to be—the original reports of the barristers under the credit of whose names they are published. It would appear, however, that, in truth, there is only one original report of the judgment—that contained in the *New Reports*. The reporter for *The Jurist*, as the publisher of the *New Reports* alleges, pirated the judgment from the *New Reports*, altering it so as to make it appear his original<sup>\*</sup>; and then the reporter of the *Law Times* borrowed the notes of *The Jurist* reporter (not knowing that they were not original), and sent them to the *Law Times*, with, as he says, but few alterations, but nevertheless so altered as to make it appear as his original<sup>†</sup>. And the *Law Times* reporter seems to think it hard that anybody should think of complaining of what was done so innocently.

\* This is not so: there was no "colourable" alteration.

† We have not the *Law Times* report before us, but we believe that this also is an error.

"The custom alluded to by Mr. Brooksbank, and the resort to which seems to be sanctioned by his employer, has long been known to exist, but we could hardly have expected to have had that construction so plainly confessed, and the judgment of the profession so challenged as to its propriety."

The history of the reports in the *New Reports* and *The Jurist* of the case of *Graham v. Wickham* in no degree justifies these remarks. The long statements in each publication of the facts and arguments in the case are admitted to be wholly original and independent, and when the original notes taken for *The Jurist* of the judgment (which alone formed the subject of dispute) were compared by Vice-Chancellor Sir W. P. Wood with the printed report, he observed that they were identical in substance, and nearly so in words. This, therefore, was not an instance of "only one original report" reappearing under another name. The two reports were really independent and original. The writer proceeds:—

"The privilege of the Bar in this matter of reporting is exceptional and peculiar, and very difficult to justify on principle.

"The present Lord Chancellor's statement of the privilege is—'That as soon as a report is published of any case, with the name of the barrister annexed to it, the report is accredited, and may be cited as an authority before any tribunal.'

"If, as it seems to be now contended for, a report may be published under the name of a barrister who knows nothing personally of the case, but has merely taken, with or without authority, the contents, in whole or in part, from a previously published report, or the notes of a brother barrister, surely it is high time that some influence were exerted on behalf of the profession and the public to put a stop to a system of such questionable propriety. Mark! it is the system we denounce, not the individuals who become engaged in it. A barrister who seeks employment as a reporter is remunerated, now-a-days, with such a miserable pittance for his services, that the proprietor cannot expect that he will be personally present in court every day from its sitting to its rising, as a reporter ought to be."

There can be no doubt that the existing system has a tendency to produce the evils here suggested, and, at best, involves no guarantee to the profession, that the enormous inconvenience of a multiplicity of competing reports is compensated by the certainty which the collation of independent reports would afford.

The article concludes with a note, refuting the impudently false assertion contained in the *Law Times* of the 22nd April, that the invitation to the Serjeants' Inn to send a representative to the Council for Law Reporting, "was rejected unanimously, all the judges, without exception, expressing their disapproval of the scheme," an assertion, which, in the face of an authoritative contradiction, is in the number of the 29th April, asserted to be "substantially correct," although it is well known that the judges have declined to interfere at present, only because they think that it would not be proper for them to do so in their official capacity, and that several of them have expressed their approval of the experiment.

### CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S INN.—Louis Courtauld, Esq., LL.B.;

John Byers Gunning Moore, Esq., B.A.; Benjamin St. John Ackers, Esq.; George Cary, Esq., B.A.; Thomas Mansel Franklin, Esq., B.A.; and John Radcliff Battersby, Esq., B.A.

MIDDLE TEMPLE.—William Joseph Cripps, Esq., B.A.; Joseph James Stuckey, Esq., B.A.; Digby Green, Esq.; and Charles Frederick Hamond, Esq.

INNER TEMPLE.—John Eldon Gorst, Esq., M.A.; Alfred Arthur Kaye Legge, Esq., B.A.; Charles Stuart Calverley, Esq., M.A.; Richard Hudson Smithett, Esq., M.A.; William John Smelter Cadman, Esq.; Henry Charles Geldart, Esq., B.A.; William Eustace Peacock, Esq.; Allan James Crosby, Esq., B.A.; Oliver Lodge, Esq., B.A.; and the Hon. Edward Stanhope, B.A.

### NEW CAUSES ENTERED IN EASTER TERM.

#### COURT OF QUEEN'S BENCH.

##### NEW TRIALS.

Midd.—Egan v. Alexander  
 Lond.—Ewin v. Lancaster  
 —Hedley v. Barlow & an.  
 —Baron De Thierry & an.  
 v. Lord Fermoy & an.  
 —Gollop v. Metropolitan  
 Railway Co.  
 Bedford—Asher v. Whitelock  
 Bristol—Green v. Groves  
 Glamorg.—O'Hanlan v. Great  
 Western Railway Co.  
 Lancaster—Martin v. Smalley  
 Manchester—Cowper v. Fletcher

Liverpool—Reynolds v. Jex  
 —Smith & an. v. Whitworth & ors.  
 —Lunt v. London & North-western Railway Co.  
 —Williams v. Reynolds  
 Hertford—Crowland v. Allom  
 Surrey—Newton v. Kershaw  
 —Richardson v. Locklin  
 Leeds—Mayne v. Burns  
 Stifford—Dimmock v. North  
 Stafford Railway Co.  
 Hereford—Manwaring v. Cheese.

#### COURT OF QUEEN'S BENCH.

##### EASTER TERM, 28 VICTORIA.—May 1.

This Court will, on Friday, the 12th, Saturday, the 13th, and Monday, the 15th days of May instant, hold sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending, and will give judgment in cases then standing for judgment.

BY THE COURT.

### Imperial Parliament.

#### HOUSE OF LORDS.—Friday, April 28.

##### COURTS OF JUSTICE BUILDING BILL.

The Lord Chancellor moved the second reading of this bill. He said that both in construction and in locality the existing courts were objectionable. The courts of law were at Westminster, but the chambers of the judges were in Serjeants'-inn; and it constantly happens that a judge sits half the day in court, and rises much earlier than would otherwise be necessary in order to go to chambers. In like manner the offices of the courts of law are scattered in different localities; and the offices connected with the courts of equity are equally scattered and equally inconvenient of access, so that business cannot be conducted without great peril of breaking appointments, and danger of counsel not being present when they are wanted. The sources from which the money required for the acquisition of the land and the building of the courts of justice were intended to be derived were three. First, a sum of 300,000*l.*, to be advanced by the Government as the price of the buildings and grounds which the Government would have received, and would have at their disposal when these courts had been erected—property which greatly exceeds that sum in point of value. The next source was the Sutors' Fund in the Court of Chancery. The



Court of Chancery was not only a court of justice, but a great bank, into which considerable sums belonging to the suitors were paid. The Court of Chancery did, with regard to the moneys it received from the suitors, precisely what an ordinary banker does with respect to the money of his customers. The income resulting from the Chancery investments had been dealt with by Parliament, again and again, as money which belonged to the public, and which the public had a right to employ in any manner it pleased, and to regard it as standing in the same relation to itself as the profits of the banker stand to him. The profits resulting from these investments had been applied, under the authority of Parliament, to a great variety of purposes. Sometimes parts had been applied to buildings belonging to the Court of Chancery, at other times in part payment of the salaries of officials, and so on. In fact, there could be no doubt that Parliament regarded it as a public fund, to be devoted from time to time to such objects as might be deemed necessary for the public welfare. The funds representing the investment of the suitors' money from time to time amounted to a sum of 2,331,047*l*. That was not the fund with which this bill proposed to deal. It belonged to the suitors. But the profit had grown out of the dividends resulting from these investments, and belonged to the State, and amounted to 1,291,629*l*. The object of the bill was to take out of the fund 1,000,000*l*. of stock, which at 90 will raise 900,000*l*. The sum which it was desirable to raise was 1,500,000*l*., divisible into two parts. The first moiety of 750,000*l*. was to be applied as purchase money of the buildings and lands upon which the courts of justice and offices were proposed to be erected. The site was valued originally, in 1849, by Sir C. Barry and a surveyor of great local information, at 870,000*l*. It was afterwards valued by another surveyor at 878,000*l*. The property was subsequently valued by Mr. Hunt, a surveyor employed by the Government, and also by Mr. Pennethorne, architect of the Board of Works; and they put the extreme value at 700,000*l*. There was a margin of 50,000*l*. That leaves 400,000*l*. to be raised, in order to make up the sum of 1,500,000*l*.; and this sum of 400,000*l*. it was proposed to supply by a small tax on suitors in the courts of law, and on those who prove wills and take out letters of administration in the Probate Court; 1*s*. 6*d*. on every writ issued in an action, and 2*s*. 6*d*. on every grant of probate or administration, would be sufficient to produce more than 16,000*l*. a year. The sum of 400,000*l*. would be advanced by the Government, charging the courts of justice 3*l*. 5*s*. per cent., and then the sum of 16,000*l*. a year having been raised for fifty years, the principal and interest of the capital sum would be redeemed.

Lord *St. Leonards* had no objection whatever to the concentration of the law courts. Once the site was fixed upon, the proposal itself would receive no opposition at his hands. His noble and learned friend, indeed, in his zeal for the measure, had, he thought, over estimated some of the inconveniences and dangers connected with the existing system. Until he heard them enumerated, he had but a very faint conception of the miseries among which so many years of his life had been passed. His noble and learned friend had not yet attained the same age as himself, but yet he was not a bad specimen of how a man might face the terrible atmosphere in which, according to his own account, he had so long been doomed to live. His noble and learned friend had spoken of the fusion—or, as he should call it, the confusion—of law and equity, and seemed to think, that if the proposed concentration of the common law and equity courts were carried into effect, that object would be accomplished. When, however, the Court of King's Bench and the Court of the Lord Chancellor occupied a position in Westminster-hall in the closest contiguity to one another, not the slightest advance was made towards the amalgamation of the two distinct legal systems which they administered. He was entirely opposed, at all events, to the removal of the courts of equity. If this measure were carried, they would break in upon the rights of property to a greater extent than had ever been attempted during the course of the last century, and they would find it a most unexampled and a most dangerous proceeding. The Court of Chancery had no right to a single shilling of profit out of the funds now in question, which it held in trust for the benefit of the suitors. He disapproved altogether the proposal to take the Suitors' Fee Fund for building these courts.

The Duke of *Argyll* spoke in favour of the bill. Lord *Cranworth* approved the site chosen for the courts. Lord *Redesdale* approved of the bill. The bill was then read a second time.

COURTS OF JUSTICE CONCENTRATION (SITE) BILL.  
This bill also was read a second time.

Monday, May 1.

COMMON LAW COURTS (FEES) BILL.

The Lord Chancellor moved the second reading of this bill.

Lord *Chelmsford* thought that some of the provisions of the bill required alteration, but would reserve his objections for the committee.

The bill was then read a second time.

Tuesday, May 2.

COURTS OF JUSTICE BUILDING BILL.

On the order of the day for going into committee on this bill,

Lord *Redesdale* said there were no powers in the bill for making adequate approaches to the courts of justice proposed to be built. 700,000*l*. was to be expended on the site, and the question was, whether another 700,000*l*. would not be required for making the approaches. And with regard to the buildings themselves, their Lordships had no estimate before them. He believed there never was a proposal on which so little explanation had been given. He moved that it be referred to a select committee, who should be empowered to report upon the question of approaches, and other points which needed elucidation.

Lord *St. Leonards* supported the amendment.

Earl *Granville* objected, that the Lord Chancellor could not find time to attend the committee.

The Earl of *Hardwicke* wished to know how the Government arrived at the conclusion, that seven acres of land in the heart of London could be purchased for 700,000*l*.

The Earl of *Ellenborough* said, that not only any private gentleman, but any prince—Cresus himself—would be very imprudent to begin to build a great palace without an estimate. The House, however, was asked to build not one palace, but half a dozen, for the purpose of making comfortable accommodation for 3000 barristers, 2300 attorneys, and 15,000 gentlemen whom they called their staff. The matter did not much concern their Lordships, but would be for those who came after them. Their Lordships would never see this great palace, although they might have to pay a portion of the cost. They would never expatiate in those courts—they would never see the common law and equity lawyers flying into each other's arms, and effecting a fusion of law and equity, not by act of Parliament, but by casual intercourse as they walked through its ample passages. He felt most unwilling to remove the courts of common law from the position at Westminster which they had held from the time when they were first made stationary.

The Lord Chancellor said, that unquestionably their Lordships would never see an end of this work, if they never made a beginning. There had been all the inquiry possible, and all the calculation that could be obtained from the most experienced persons had been laid before Parliament. It was impossible to lay down what portion of the seven acres of land would be required or could be dispensed with. When the expense of the buildings and land was ascertained, he had no doubt a considerable portion of land would remain, part of which might be dedicated to the improvement of the approaches from the Strand.

Their Lordships then divided on the question that the bill be committed:—

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Their Lordships then went into committee on the bill.

The clauses were agreed to, and the bill passed through committee.

COURTS OF JUSTICE CONCENTRATION (SITE) BILL.

The House went into committee on this bill.

On clause 3,

Lord *Chelmsford* inquired whether the words of the clause

were sufficient to insure a proper access from the Temple to the new courts, either by a tunnel or covered gallery.

The *Lord Chancellor* could assure his noble and learned friend, that a convenient access from the Temple to the new courts of law was to be, and should be, a part of the design.

The clauses were agreed to, and the bill passed through committee.

#### HOUSE OF COMMONS.—Thursday, April 27.

The Lancaster Court of Chancery Bill passed through committee.

The Land Drainage Supplemental Bill was read a third time, and passed.

The Oxford University (Vinerian Foundation) Bill passed through committee.

#### TENURE AND IMPROVEMENT OF LAND.

On the order of the day for the adjourned debate on this subject being read, the select committee, consisting of the following members, was agreed to:—Mr. Maguire, Mr. Cardwell, Lord Naas, Sir R. Peel, Mr. S. Fitzgerald, Mr. Lowe, Mr. Hunt, Mr. W. E. Forster, Lord C. Hamilton, Colonel Greville, Sir E. Grogan, Sir C. O'Loughlin, The O'Donoghue, Lord Dunkellin, Mr. Caird, Mr. George, and Mr. Bagwell. Power to send for persons, papers, and records. Five to be the quorum.

The Sewage Utilisation Bill passed through committee.

#### MORTGAGE DEBENTURES BILL.

The House went into committee on this bill, and the 10th clause (regulating the collection of fees) which had been postponed, was agreed to. The bill was ordered to be reprinted.

#### LAND DEBENTURES BILL.

This bill also was considered in committee, clause 18 was omitted, and a clause relating to stamps was inserted.

Monday, May 1.

#### PARTNERSHIP AMENDMENT BILL.

Mr. *Milner Gibson*, in moving the second reading of this bill, referred to Mr. Scholenfeld's bill for the purpose of amending the law of partnership. The object was to enable persons to carry on business with unlimited liability, and to enter into partnership with others who should be liable only for a specific amount, designated limited partners. The measure contained various rules and restrictions, which rendered it necessary that it should embrace a great number of clauses, and it proposed, on the whole, to effect a very considerable change in the law of partnership. It passed through a select committee, the House having adopted its principle; but the difficulties were so hard to be surmounted that he abandoned the measure, an understanding having been come to between himself and the Chancellor of the Exchequer that the question should receive the serious consideration of the Government. Under those circumstances, the Government had deemed it to be their duty to take the matter in hand, and it had occurred to them that the benefits to be derived from such a measure as that of his hon. friend might be secured by another mode of proceeding of a simpler character, and one which would be attended by a less alteration in the rules and principles of the law of partnership. The bill had for its object so to relax the rule of law that a participation in profits constituted a partnership as to enable a person to lend to a firm on the condition that the remuneration for the use of the money should be a portion of the profits, instead of a fixed interest. That was the proposal embodied in the first and principal clause. The second clause would enable persons to pay their servants, as a reward for their labour, instead of a fixed salary, a portion of the profits of the business in which they happened to be engaged; while the third clause would entitle the widow or child of a deceased partner in any commercial house to receive a portion of the profits by way of annuity, without thereby being constituted a partner; but it was provided that the lender of the money, the person who received a share of the profits as a reward for his labour, and the annuitant, although they should stand in the relation of creditors to the trader with whom they had had transactions, yet should not be entitled to recover their money until all the other creditors of the firm had been paid. He had adopted in this bill pretty nearly the words which

were suggested some years ago by Sir Hugh Cairns. He was not in any way interfering with the general laws of partnership. If a man was put forward to the world as a partner; if he allowed his name to be used as a means of obtaining credit; if he was, in fact, the person who was trusted, then, although he was only a lender, he must be responsible for the debts that were contracted. But if he was a mere lender, if he was not known to the creditor when credit was given to the firm, he did not see upon what principle of justice he could be called upon, should the firm to which he had advanced money fail, to pay all the debts even to his last shilling. He believed that it was doubted by competent authorities, whether the law laid down in the case of *Waugh v. Carver*, which established that participation in profits constituted a man a partner, was not erroneous. When Mr. Baron Bramwell, then Mr. Bramwell, was examined before the Mercantile Laws Commission, he said, that he should have thought that nothing could have been conceived more contrary to law than the rule which was laid down in that case, but that it had been so long received as law that it could not be changed without legislation. On the grounds of general policy, it was very desirable to enable employers and employed, if they thought proper, to make contracts without any fear under the law of partnership. Too sharp a line was drawn between employers and employed. Strikes and turnouts frequently arose from an exaggerated view of the profits of capital; and the more the system proposed was acted upon, giving the labourer in reward for his labour a portion of the profits, the more likely would correct views on this subject prevail, and the less likely would strikes and turnouts become.

Mr. *J. Peel* could not assent to the declaration in the preamble, "that it was expedient to alter the law relating to partnership." He believed there was no part of the world in which such great facilities existed for the transaction of commercial affairs as in England, where capital found its way so readily into channels of enterprise, and where credit was so extended, and at the same time founded upon such great security. The present law of partnership was one of the many props upon which our credit system had been erected, and he could not find out that there was any important portion of the commercial community who desired an alteration in that law at present. On the contrary, he had taken great pains to ascertain the opinions of men engaged in commerce—bankers, merchants, and manufacturers, and he found, among all those whose judgment was entitled to respect, the greatest apprehension of the consequences that would ensue from the adoption of the principle of limited liability of private partnership without most ample publicity. He also believed that the present moment was particularly importune for any speculations in our commercial equity. It would have been better to have left well enough alone at present. The first clause of the bill contained the substance of the whole. If the House were to adopt that clause, the remainder of the bill must pass as a matter of course. There was a good deal of ambiguity as to the wording of the clause, and "lender" was made use of, instead of the old word "partner." So far as he could understand the clause, its object was to enable two persons to associate together for the purpose of carrying on a trade or calling under a contract, by which one should provide the capital, and another contribute his skill, with his personal attendance to the furtherance of the common object; that each should participate in the profits or losses; and while the working partner should be subject to all the responsibilities of a partner, as, under the present law, the person who furnished the capital should have no further risk than the loss of the capital which he originally put into the concern. There was no provision for any publication or registration, so that, as far as the public were concerned, the contract might be a perfect secret. This would be productive of very evil consequences, and a probable result would be, that cases of this kind would occur:—A scientific person, or a man of mechanical skill, would invent some improvement in the manufacture of a commodity, but not having sufficient capital to carry out his plans, he would invite the co-operation of a man of capital, and make a contract with him to provide money sufficient to carry out the business for a term of years. During that period, supposing the business was eminently successful, the capitalist was never named, but the business was carried on in the name of the inventor, who was the ostensible sole proprietor, who, being so

successful, every one was anxious to give him credit, and supply him with the articles which he required; his credit increased, and at the end of the term of the contract the moneyed partner withdrew his capital, and retired. The working partner, very naturally seeing that he could get any amount of credit, thought he could get on without capital, and continued the business as before. The credit was given in the belief that the working partner was in the possession of all the accumulated profits obtained during his successful operations. A slackness might occur in the demand for the article which he manufactured, and he went on for a while with the hope that trade would revive, and he availed himself to the utmost extent of the credit which people were willing to give him. The trade did not mend, and the man was disappointed. He stopped work, and was obliged to call his creditors together, and tell them he was unable to meet his engagements, and the creditors then found for the first time, that, instead of gaining largely from year to year, he had had all this time a vampire on his back in the shape of a moneyed partner, who, after sucking his life's blood, left him a mere skeleton. This was one of the results which was likely not unfrequently to happen under the operation of such a bill as that before the House. It was most probable that the bill would also have the effect of leading to ruinous speculation and overtrading. It was obviously the interest of the moneyed partner in any concern at present to exercise continual supervision over those who had not the same capital as themselves, and to exercise a salutary control over those who might be more energetic and speculative than prudent, and the result was, that, in a very few instances, firms of that kind came into difficulty; but if this bill were passed, the interest of the capitalist would be exactly the reverse, that was, trading to the utmost extent, and to encourage the working partner not only to avail himself of the capital he had advanced, but to stretch his credit to the utmost, and that for the sake of making the annual profits as large as possible. It was quite probable that within a few years of prosperity the capitalist might then take out five or six times as much as he advanced, and if bankruptcy came his loss would be small, while many of the creditors would be involved in a common ruin. This, he believed, would also be a certain result of this bill. It would, in addition, open the door widely to deliberate fraud. He would be sorry to give instances which he might readily adduce, lest if the bill passed they might be adopted as suggestions. In times of panic, which we must expect occasionally, he was afraid that the distress which prevailed on those occasions would be greatly increased by the suspicion that every man would entertain of his neighbour, that he had some unseen partner taking the profits unknown to the public out of the concern. He moved that it be read that day six months.

Mr. J. A. Turner seconded the amendment.

Mr. Scholfield supported the bill.

Mr. Moor suggested that a proviso should be attached to the first clause, to the effect that every contract for a loan of money to a trader, upon a certain rate of interest out of the profits of trade, should be registered.

Mr. Cave thought that the uncertainty of limited liability was as nothing compared with the peril and uncertainty of unlimited liability. When they remembered the failure of banks such as Hammereleys, Paul, Strahan, & Co.'s, and a still more recent instance, there could be no doubt that, under no system that could be adopted, could the public be more misled. Those who insisted upon publicity and registration would defeat the object of the bill, and would expose the public to a danger of thinking they had a better security. If there were publication of lenders, the public would associate the credit of the lender with that of the trader, and thus would be liable to be deceived. Surely the public would not be injured, if, when A. or B. became bankrupt, it was found that somebody behind had advanced 6000*l.* or 7000*l.*, which would not come in competition with their debts. He did not agree with the hon. member for Brighton, that the bill would be a dead letter, but he did not think it would be applied in many cases.

Mr. Baxter observed, that many of the objections which had been raised were merely objections that applied to the system of limited liability which had already been settled. As to registration and publicity, those, he thought, were matters for consideration in committee. It was true, that some years ago the majority of the mercantile classes were op-

posed to the principle of limited liability; but a great change of opinion had since then come over them in that respect.

Mr. Hubbard said it had been stated that that bill was intended to bring together capital and skill, to raise a competition against large corporations and trading companies, and to avert strikes. How it was to avert strikes he could not see, and he could neither admit that a stimulus to competition was required, nor that any fresh means for bringing capital and skill together was necessary. There was a vagueness about the terms employed in the bill. A lender was spoken of. But under that name a man might employ an agent to carry on a concern, and take for himself the lion's share of the profits. If trade went on well, the arrangement might be perfectly satisfactory; but if, instead of there being a profit, there was a loss incurred, how was the capitalist to be satisfied? The very essence of the proposal was, that he was to be a sleeping partner. He looked on the bill as a mischievous, not so much as touching the law of partnership, as touching the law of principal and agent—one of the most important parts of the law connected with commerce, which they ought to be very careful not to impair. The bill would destroy the responsibility of the principal, and substitute for it no countervailing advantage. Under it the capitalist or principal might, the moment an undertaking was going wrong, take all his capital away; and the expectation that the creditors would reap the benefit of his contributions would prove quite illusory. He must deprecate a change which he thought would operate most detrimentally on the character of our commerce. If there was one point on which he felt more confident than on another, it was that those who opposed that measure did so in the interest of the community at large, and of the integrity of our great capitalists. If the bill passed, it would be easy for men of large capital to set up servants and agents, and themselves keep behind a screen, reaping the profit as long as things went on smoothly, but withdrawing their money from the concern before its bankruptcy was declared. He would cordially support the amendment so ably moved by the honourable member for Tamworth.

The Attorney-General said he always listened to receive instruction from gentlemen conversant with the practical operation of the law of partnership; but perhaps those honourable members did not speak with equal authority when they referred to the principles of the law. The effect of the bill, as regarded the law of principal and agent, was quite the reverse of that described by the hon. gentleman who had just sat down. It would repeal the arbitrary law, established by judicial authority alone, which did interfere with the law of principal and agent. The law of principal and agent was, that a man should be held responsible for contracts which he authorised another to make on his behalf, but not otherwise. Then, putting aside the arbitrary decision in the case of *Waugh v. Carter*, he asked, did the man who lent money to be repaid with interest according to a fluctuating rate, or in proportion to the profits, really authorise the borrower to bind his whole fortune by any contract which he might make? Clearly, nothing could be more foreign from his intention than to give any such authority; and the court of law which said that he should not lend money without being taken to give that authority, interfered with the natural course of mercantile transactions, and virtually prohibited them, by imputing to them a false character and intention. The principle on which the Legislature had hitherto proceeded in altering the law of partnership, and introducing limited liability, had been that of leaving the parties free in mercantile matters to make such contracts as they pleased, and not by arbitrary legal rules to circumscribe the range of legal contracts, which had nothing evil in themselves. As long as a man knew what he was about, let him do that. If A. knew that B. did not undertake to be responsible to him beyond a certain limit, that was his affair; he knew whether or not it was worth his while to deal on that footing. Although many unsuccessful undertakings might be started on the principle of limited liability, yet experience was bringing round the great mercantile concerns of the country to that principle. Why was it not to be extended to other concerns as well? The simple question was, would they allow a man to lend money to a borrower on the terms which they might arrange between themselves? If the law did not interfere, the transaction would not make the lender a partner. Then why should they interfere to make him so? It was said they might mislead those who became creditors of the concern.

To whom did they give credit? They gave credit to the man carrying on the business, and to the business he was carrying on; and the bill did not take away the liability of the person to whom they gave credit. The object of the bill was to prevent the arbitrary interference with the meaning of contracts made by parties. Nothing could be more irrational than the present state of the law, and he did not think that the maintenance of the rule which had been laid down by one of the judges could be said to be necessary for the maintenance of commercial credit.

Mr. Bovill did not think the law so unreasonable as the hon. and learned gentleman had described it, for the principle was perfectly intelligible, that the person who received benefit by a participation in profits should be liable also in case of loss. He was not opposed to limited liability, but the present bill would absolve certain parties from all liability; and it might be intitled a bill to enable capitalists to commit fraud on the public. If the bill should be carried, there was nothing to prevent a capitalist placing 10,000*l.* in the hands of a person of skill and great activity to operate upon. That person might receive a remuneration of 500*l.* a year; but with the capital of 10,000*l.*, credit might be obtained to the amount of 30,000*l.* By regular payments, the credit might be increased in a few years to 50,000*l.* or 60,000*l.* Large profits might be derived, all of which, with the exception of the 500*l.* paid to the agent, would go into the hands of the capitalist; and when a time of reverse came, the capitalist would immediately withdraw his 10,000*l.* The bill, therefore, instead of being a measure limiting liability, would absolve a capitalist so acting from every farthing of liability. The bill struck at the principle of the law of agency, and was not similar to the measures which had been previously sanctioned by the House in two successive years; for the bills of 1862 and 1863 contained various safeguards for the protection of the public which were wanting in the present proposal. In the bills of 1862 and 1863 there were provisions for the public which were omitted from this bill. For instance, there were provisions that there should be a registration, that parties should be bound to contribute the whole sum they had contracted to pay; they were not permitted to withdraw capital, or to take security for it, until the debts were paid; and if any money had been withdrawn, they were bound to restore it for the purpose of meeting debts. It was singular, that while this bill was in the hands of a private member, all these provisions for the protection of the public were contained in it; but when it came into the hands of a public department, the Board of Trade, they were omitted from it.

Mr. Gibson.—This bill has already twice been read a second time.

Mr. Bovill.—That only made the case stronger, for it shewed that the bill must have been a bad one, and must have been, therefore, thrown out. These provisions were actually inserted by a select committee, and had been left out by the right hon. gentleman. He should give his cordial support to the amendment.

The Solicitor-General said, that the preamble of the bill was very simple. It distinguished between lenders and partners. According to the present law, those who lent at a fixed interest were not in any sense partners; but those who lent at not a fixed interest, but at an interest payable out of profits, were not lenders, but partners. The law said that a man was not a partner, even if he received an interest calculated with reference to a proportion of the profits; but if he lent money, and took a share of the profits, then he was a partner. Why should there be that difference? In the case which his learned friend had put, the man who lent 10,000*l.* was not a mere lender; he was actually a partner—one of the firm, and would be responsible for the losses. Therefore, the case had nothing to do with the question. Every single inconvenience which his learned friend had supposed was as applicable to, and was as likely to arise under, the present state of the law as under this bill. The whole subject really lay in a nutshell. The bill would make a great improvement in the present state of the law, and he hoped the House would pass it.

Mr. T. Baring agreed with the Solicitor-General, that the question lay in a nutshell, and the nutshell was this: should a system of trade be established in this country, under which a man should be enabled to get any amount of credit he chose, and should be able to trade to any extent, and, when

a time of misfortune came, should be able to withdraw his capital and leave the public to bear the loss? The system of trade hitherto had been to inculcate on our traders that everything depended on their integrity and prudence. A man in trade hesitated now before he rushed into speculation, because he knew that he would risk the whole of his capital and his future prospects; and it was this knowledge that had made the British merchant prudent and calculating. It was true, that you could, not even under a system of unlimited liability, get rid of all frauds, but this was no argument against the adoption of every necessary precaution. Two-thirds of the trade of the country were carried on upon credit, and this rendered necessary all the safeguards which could be provided against plans to deceive the creditor. This measure was without any of the safeguards contained in former measures which had been proposed, and did not give the protection which was afforded to creditors in other countries; it would not clear up the law, but would rather introduce further confusion.

Mr. Goschen said the opponents of the bill wished to prevent the English trading public from doing what they liked with their own. It was poor testimony to the honesty of British capitalists to suppose that there would be a rush of capital in the direction contemplated by the bill, and it would be advanced with a fraudulent tendency.

Mr. Malins denied that the evils contemplated by Mr. Bovill would be brought about by this bill, for they might equally exist if money was advanced for purposes of trade at a fixed rate of interest. Capital and skill ought to participate alike, but there was great difficulty in bringing them together. The bill of the hon. member for Birmingham was one to establish limited liability between ostensible partners; but the case now contemplated was one in which a man was not, in point of fact, a partner, but a lender of money. Could anything be more unreasonable than that if a man lent 500*l.* to a trader, the latter should have authority to spend, to the last farthing, all the money which the lender might possess? It was by no means certain the bill would be very extensively adopted, but that was no reason why the House should refuse to pass it, as it was founded on the soundest principles.

Alderman Rose opposed the bill.

Mr. Neudegate asked for registration of the lenders.

Mr. Henley did not believe that this bill would either make dormant partners or sleeping partners, for it declared that lending money in a particular manner should not in itself create a partnership. The best maxim for the present day was caveat emptor; they must give perfect freedom, and let every one look out for himself. He thought it useless to mince matters, and he believed that to be the plain state of things to which they had come. Whether the safeguards provided by the bill were good or bad might be considered in committee, and he should vote for the second reading.

The House divided. The numbers were—

For the second reading .. ..	126
For the amendment .. ..	39
Majority .. ..	—87

The bill was then read a second time.

ADMISSION OF SOLICITORS.—The Master of the Rolls has appointed Thursday, the 11th May, at the Rolls Court, Chancery-lane, at four o'clock in the afternoon, for swearing in Solicitors. Every person desirous of being sworn in on the above day must leave his common law admission, or his certificate of practice for the current year, at the Secretary's Office, Rolls-yard, Chancery-lane, on or before Wednesday, the 10th May. The papers of those gentlemen who cannot be admitted at common law till the last day of Term will be received at this office up to twelve o'clock at noon on that day, after which time no papers can be received.

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## THE JURIST.

LONDON, MAY 13, 1865.

UNSATISFACTORY as the law is in most points referring to the practice and procedure of the court of quarter sessions as an appellate court, perhaps no portion of it has been, and (as we think) is in a more lamentable state, than that which, by a misnomer, is supposed to "regulate" the entry and respite of appeals in cases of the removal of paupers. Statutory interferences have not been wanting; but, as is not infrequently the case, having failed in applying the proper remedy, they have only made the confusion worse confounded. The Court of Queen's Bench has not failed, time after time, to express its dissatisfaction at the manner in which the discretion of the magistrates was exercised; yet having to confess, that it was a matter in the hands of the magistrates, and that they could interfere no further than by an expression of opinion, their words received that amount of weight which too often is awarded to them when referring to matters in the discretion of the great unpaid; the bench listened, perforce, to the words of wisdom, as read to them over and over again by counsel, and went on in their old way. They quietly shewed in a practical way, that knowledge is power, if it is not wisdom; they accepted so much as deferred to their power; rejected so much as reflected on their wisdom. Into the history, however, of the discretions (as by courtesy we must call them) of the magistrates, we do not propose to enter; it is inscrutable. The history of parliamentary interferences, and the result, we, however, propose to give, as lately expressed in the elaborate judgment of the Exchequer Chamber, delivered in the case of *Reg. v. The Justices of Sussex* (34 L. J., M. C., 69), a case in which, curiously enough, on the quarter sessions taking the opposite course to that which had been generally reprobated, and refusing to enter and respite, the Court of Queen's Bench thought they were wrong under the circumstances; but, on appeal, the refusal was held right. In that case the order of removal was served on the 30th August; copies of the depositions were applied for on the 17th, and received on the 19th September; the quarter sessions for the eastern division were held on the 15th, and for the western (in which the respondent's parish was) on the 18th October, on which day the appellants applied to enter and respite. No grounds had been delivered; by the practice of the sessions, eight days' notice of appeal was required. The sessions refused. On the application for a mandamus to compel them, the majority of the Queen's Bench decided they were wrong, but the Court of Exchequer Chamber has eventually decided they were right; first, because grounds delivered with the notice of appeal would have been valid; secondly, because even if it were necessary to deliver them fourteen days before the sessions, the magistrates have a discretion; and, thirdly, if the above propositions were wrong, yet there might have been a fourteen days' notice to the western division. The history of the law, as given by the Court, and their

reasoning on it, in a condensed form, were as follows:—The governing statutes are the 13 & 14 Car. 2, c. 12, giving an appeal to the next sessions; the 9 Geo. 1, c. 7, commanding an adjournment if reasonable notice of trial is not given; the 4 & 5 Will. 4, c. 76, delaying the removal of the pauper; and the 11 & 12 Vict. c. 31, bearing the appeal unless within twenty-one days, plus a contingent fourteen days; and the question is, how far the last two statutes affect the first. The first statute was imperfect in not defining "next," and in not regulating the times for the commencing and bringing to trial of the appeal. These imperfections have been partially remedied by the Courts and the Legislature. The Courts held "next" to mean "next practically possible." This relieved the appellants, but not the respondents, and the 9 Geo. 1, c. 7, was therefore passed; but the Courts having decided, that under this statute the appellants, by not giving notice of trial, might demand an adjournment, they could under this statute, intended to relieve respondents, always get a quarter's delay. Some check was put on this by the 4 & 5 Will. 4, c. 76, which provided as to the time of the removal of the pauper, and that grounds of appeal should be given with the notice, or fourteen days before the sessions where it was intended to try. The effect of this statute was, that grounds might be delivered with the notice; or if there were more than fourteen days to the sessions, might be delivered as late as fourteen days before the sessions, but the practical time for deciding about appealing was left as under the 13 & 14 Car. 2, c. 12. Now came the 11 & 12 Vict. c. 31, which, among other things, remedied the evil which arose from the decision, that the removal of the pauper was itself a grievance which could be appealed against. It provided that notice of appeal must be within twenty-one days from service of the order; and if it had stopped there, it would have been complete; but it further provided, that if the appellant required copies of the depositions, he should have fourteen days from their receipt to give notice. Here there was a defect in not limiting the time for requiring them. The statutes thus fix a maximum of delay, after which the appeal is barred, but have no reference to the maximum of delay, after which the sessions next, in fact, may be passed over as not the next practicable, or after which the appellant may demand an adjournment. They give no right to assume that it is not practicable to prepare for trial in the twenty-one and fourteen days; and (as it is clearly possible) the sessions may find that there has been unreasonable delay, and refuse an adjournment. It has been said in some cases that the appellant has a right to take all the time, the twenty-one days plus the fourteen, without losing his appeal. This is true when more than thirty-five days intervene between the service of the order and beginning of the sessions, but not where they begin within that time.

The upshot, then (if we rightly read this decision), is this—that, after all this legislation, neither appellant or respondent can with certainty tell whether they will have to try or not; and whilst they intend, if possible, to put off the trial in order to perfect their

case, they will not be able prudently to avoid bringing such witnesses and evidence as they have, for the chance of the Court deciding not to adjourn. This is most lamentable, and we hope that, by a short statute, this matter will be clearly and for ever settled. The scheme, as it appears to us, should be this—First, with the notice of the order of removal should be sent, as now, a copy of the order, and of the grounds relied on; and also, in addition, a copy of the depositions. Secondly, then twenty-one days should be given to examine into the matter, and within them the notice of appeal should, of necessity, be given, together with the grounds. Thirdly, on receipt of the notice and the grounds, the respondent should have an equal time, because in many cases the grounds would contain not mere traverses of their grounds, but assertions of other settlements, into which they should be allowed to inquire; and the rule should be made general to prevent any difficulties arising from distinctions as they have hitherto. Fourthly, if the twenty-one days from the service of the notice and grounds of appeal elapse before the next sessions, both sides absolutely to come and try; if not, then absolutely not to come, but to come and try at the sessions after, unless they agree between themselves to come and try at the previous sessions. Fifthly, to meet cases, where it may chance that the evidence cannot be got in time, where a new settlement turns up, &c., the Court should have power, on being satisfied by evidence on oath that, for the interests of justice, there should be an adjournment to get evidence, set up other grounds, &c., to adjourn the hearing, and add other grounds, on payment of costs of the day, and such other terms as appear reasonable to them. This scheme we submit to such of our readers as are interested in this matter for their consideration. Subject to alterations in detail, it seems to us to meet the necessities of the case.

### THE PARTNERSHIP BILL.

WHEN stale fallacies are again brought forward, with a view to action, they must be again refuted. We therefore make no apology for once more explaining and defending in these columns the English law of partnership liability.

Until lately no rule of law was considered to be more firmly settled than that which declares every person who is entitled to a share in the profits of a business liable to pay the business debts. It is true that Lord Eldon once volunteered a statement on the subject which has sorely puzzled the profession; but apart from the dictum in *Ex parte Hamper*, no rule was better settled or better understood than that which we have stated. Of late no rule has been better abused. Even in a grave treatise on the Law of Partnership it is thus stigmatised:—"The rule is in the highest degree arbitrary; it is grossly unjust; and it is productive of the greatest confusion." (Lindley on Partnership, vol. 1, p. 20). If this be so, and if the English law of contracts is in the main founded on sound principles, the rule must be inconsistent with what is sound in that law; and the mode of amending the law must be obvious and easy. Yet it can be shewn that the rule is nothing but an application to one class of cases of the more general rule,

that a debt must be paid by those who contract it, a rule which has hitherto been treated with some respect; while the substitution of a different rule is so far from easy, that during nearly twenty years of agitation no agreement has been concluded, either as to the extent or as to the form of the desired alteration.

It is a principle of English law, that he who procures goods or money to be supplied on credit must satisfy the creditor, although the supply may not be wholly or in part for his own benefit, unless he acts merely as agent for another, and is dealt with on that footing.

Thus, if A. opens a shop, places M. in it as manager, and through M. procures a supply of goods, A. is liable to pay for them, and M. is not liable, unless, by allowing the business to be carried on in his name, or otherwise, he represented himself as a principal. So, if A. and B. carry on the business, either personally or by means of an agent or manager, each is liable for the whole of the debts contracted in it, and not merely in proportion to the amount of his interest; and it is remarkable, that among the suggested alterations, the proposal to excuse a partner from liability for more than a share of the partnership debts, proportionate to his interest in the business, has never been made, or, if made, has never attracted attention.

The creditor, when he seeks to enforce payment of a trade debt, does not sue the shopman, the clerk, or the agent who personally appeared in the business, but he sues the principal, or, at least, the person who held himself out as principal. The principal is the person for whom the business is carried on; and as trade is followed, not as an end, but only as a means of obtaining profit, the person who seeks the profit, who will be entitled to take it if it is made, is the person for whom the business is carried on, and the person who, as principal, is and ought to be liable for the engagements contracted in the conduct of it. If several persons concur in seeking profit from the same business, they are jointly and separately liable for the debts contracted for their benefit. Each is liable for the whole of the debts, because any apportionment of the liability so as to affect creditors, would be inconvenient and unjust; inconvenient as involving creditors in an inquiry into the private concerns of a firm, which they have no means of pursuing; unjust, because it is more reasonable that those who voluntarily join in an undertaking, and have the means of knowing the character and watching the conduct of their associates, should be answerable for each other, than that strangers, who have not the same means of knowledge, and have no power of control, should take the risk. Whatever the inducements may be which determine credit to the firm, they are inducements of which each member seeks to make his profit; and there is no ground of distinction in this respect between a sole trader and a partner. A sole trader, who buys and sells goods on credit, must pay for the goods, although, by the insolvency of his customers, he loses both the cost price and his anticipated profit. It is no answer to the demand to say that he was deceived by those whom he trusted. It is for him to see to and take the risk of his customers' solvency, because he alone can do it, and because without that responsibility he would have no inducement to circumspection and prudence in the conduct of his business. So it is just and wholesome that every partner should be liable, not only for the solvency of his customer, but also for the conduct and solvency of his co-partners, because his judgment alone is consulted in the selection of them, and he alone can reserve and exercise the right of control over the partnership deal-

ings. If he is content to sleep while others work for him, he must also be content to answer for all that he allows to be done on his behalf.

As the law stands, if A. provides the capital, and B. the industry and mercantile skill, which they think necessary for carrying on a business, and agree to divide the profits in any proportion, they are partners, and each is liable for the debts which either contracts in the business. The transaction may be described indifferently as a loan of money by A. to B. in consideration of a share of profits, or as an engagement by B. to conduct the business as the agent for A. in consideration of a share of profits. But by the Government bill, now in the House of Commons, it is proposed to be enacted, that A. or B. shall not be liable on account of any credit given to them in such a business. The proposal is so absurd that we must protect ourselves from the charge of misrepresentation by transcribing the clauses:—

Sect. 1. "The advance of money by way of loan to a person, engaged or about to engage in any trade or business, upon a contract with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, or bear a share of the loss, arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or the persons carrying on such trade, or render him responsible as such."

Sect. 2 gives priority of claim to other creditors over such lender.

Sect. 3. "No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall of itself render such servant or agent responsible as a partner therein."

A. and B. agree to share the profits of a business. A. furnishes the capital, which is to be repaid to him when the business is wound up. B. manages the concern. A. does not interfere. Who, under the proposed enactments, would be liable for the debts? B. is sued, and replies that he is only the agent. A., on the other hand, says that he is only a lender to B., "engaged in the business." Which is exempt? It would be difficult to maintain the exemption of both—for if B. carries on the business as agent for A., A. must, in effect, carry on the business on his own account by his agent, and so must be liable as principal, though not liable in respect of his participation in profits. But in every case where A. does nothing but lend capital and share in profits, and B. does nothing but manage and take the remainder of the profits, how can the transaction be otherwise described than as a loan and participation of profits within sect. 1, and an agency and participation in profits within sect. 3? Can the substance of the thing be altered, or ought the liabilities of the parties be affected by a verbal or written agreement between them to call A. lender, or to call B. agent? And this is the best substitute that, after so many years of agitation and discussion, can now be offered for the rule that the debtors in a business are those for whose benefit it is carried on!

We have assumed that the bill cannot be read as exempting both A. and B. But if A. and B. desired to become both exempt from liability, they could do so with the help of C., a man of straw. C. would lend his name, but be excluded from interference by very effectual means, not involving any contract to that effect. A. would lend the capital to C. B., as agent for C., and for A.'s protection, would have the custody of the capital and the control of the business. C. would take one ninety-ninth part of the profits, and the residue would be shared by A. and B.

The supporters of the bill ask "Why should one per-

son who finds the capital for another person's business be a partner, if he takes a fluctuating rate of interest, and not a partner if he takes a fixed rate of interest, however high?" The answer is, that it is not another person's business, if the capitalist takes the profits; participation in profits and partnership are two forms of expression for the same idea; that, as we have already explained, a given business is the business of those who are entitled to the profits made in it; and that if a person reserves a right to profits under the name of interest, that might be a reason for making him liable as a partner (as Lord Eldon was disposed to do in *Ex parte Langdale*, 18 Ves. 300), but could be no reason for exempting other partners. There is an essential distinction between taking interest and sharing profits. The stipulation for profits reasonably and obviously includes a stipulation for inspection of the accounts, and control over the management. A creditor cannot ask for such a control; or if he asks, and gets it, he is a partner in disguise, and evades the law. If that can be prevented, let it be done. The practical reasons for not inferring partnership from a reservation of heavy interest are—first, that it is impossible to fix a standard rate of interest; and, secondly, that the cases in which evasion of partnership liability, by reserving a fixed rate of interest for capital, would be possible, are few and unimportant. On the other hand, the question may be asked, if it is expedient that a man may furnish the capital for a business, or may manage it, and participate with another in the profits, taking, it may be, the principal share, without incurring liability for the debt, why should not a man combine in his own person the character of capitalist and manager, and take all the profits without incurring the liability?

The truth is, that every consideration of expediency justifies the strict enforcement of the old test of liability. You cannot trust a manager with the control of more capital or credit than is due to his own interest in the business without making him reckless; and it is right that, if you do so, you should be responsible for his engagements. On the other hand, if you personally conduct a business, and take a part of the profits, your liability for the losses is the least guarantee that you should give for circumspection in the management. There is certainly nothing in the condition of commerce in this country at the present time which requires that any fresh stimulus should be given to commercial enterprise, or to the employment of capital.

So much importance is still attributed to the remarks which are said to have been made on the subject by Lord Eldon in *Ex parte Hamper* (17 Ves. 803; S. C., nom. *Ex parte Rowlandson*, 1 Rose, 89), that it is worth while again to shew, that if what is attributed to his Lordship in that case was really uttered by him, it not only had nothing to do with the case, but was actually contradictory and nonsensical. The question of liability to creditors did not arise, and was not discussed in the case. There was an admitted agreement between two persons to share the profits of an adventure as partners; the partnership and consequent liability of the partners were not denied, and the only question was as to the ownership of certain goods. Lord Eldon, one of whose many foibles was a love of display, which often led him into irrelevant and ill-considered disquisitions, said, "They may clearly agree that all the property which is the subject of that agreement shall be the property of one exclusively, but that the other shall participate in the profit arising from it. The cases have gone further to this nicety, upon a distinction so thin, that I cannot state it as established upon due consideration, that if a trader agrees to pay to another person for his labour in the

concern a sum of money, even in proportion to the profits—equal to a certain share—that will not make him a partner; but if he has a specific interest in the profits themselves as profits, he is a partner. *Another consideration is, the consequence of that in regard to third persons.*" This had no connexion with the subject in hand; but it referred to the constitution of partnership as between the parties themselves, and the distinction, stated by Lord Eldon to be thin, is solid and satisfactory. As between themselves, the parties may agree either to be, or not to be partners—that is, to have, or not to have, those mutual rights which belong to that relation. If they agree in so many words, there is no question. If their agreement is silent on the point, the intention must be made out by inference; and it is a fair inference that they intended not to be partners, when they have taken the trouble to stipulate that one of them shall perform certain services, and that his remuneration shall be, not a share of the profits, but a sum fluctuating with profits made by the other. So far as regards the division of the profits only, it is indifferent which way the agreement is expressed (see *Katsch v. Schenk*, 13 Jur., part 1, p. 668); but as regards the other incidents of a partnership, the relations of the parties will be, as they were intended to be, very different in the two cases. (See *Hocker v. Brocklebank*, 3 Mac. & G. 250; *Harrington v. Churchward*, 6 Jur., N. S., part 1, p. 576; and *Reg. v. Macdonald*, 7 Jur., N. S., part 1, p. 1127).

On a subsequent day his Lordship said, "Thomas is clearly a partner as to third persons; whether as between himself and Rogers is a very difficult consideration. *The ground as to third persons is this*:—It is clearly settled, though I regret it, that if a man stipulates that, as the reward of his labour, he shall have, not a specific interest in the business, but a given sum of money—even in proportion to a given quantum of the profits—that will not make him a partner. But if he agrees for a part of the profits as such, giving him a right to an account, though having no property in the capital, he is to third persons a partner, and in a question with third persons, no stipulation can protect him from loss." Here we have what two days before was stated to be the test of partnership inter se, applied, by way of contrast, as a test of liability to creditors! The dictum does accurately state the test of partnership inter se, though his Lordship, directly contradicting his former remark, said that that was a very different consideration. The dictum appears more inexplicable when the case in which it was uttered is considered. The parties in their correspondence styled themselves partners, and spoke of their "house," and, according to the report in *Rose*, there was an express agreement to share profit and loss. The dictum was not founded on any previous decision, and has never been acted upon. The assertion that the distinction was clearly settled is one of many instances in which Lord Eldon has endeavoured to justify his doctrine by referring in general terms to purely imaginary authorities. It should be remembered that Lord Eldon's second dictum contained two propositions, one of which is clearly right, while the other is as clearly wrong; and the cases usually cited in connexion with the dictum only bear on the first proposition. *Waugh v. Carver* (2 H. Bl. 236) decided that an agreement to share profit involves liability to creditors; *Grace v. Smith* (2 W. Bl. 998), that a fixed annuity to a retired partner does not continue his liability. In *Ex parte Langdale* (18 Ves. 300) it was alleged that certain brewers stipulated with a publican that they should supply him with beer at 17s. per barrel above the market price, and Lord Eldon directed an issue to ascertain whether this agreement was for an interest in the profits. In *Dry v. Boswell* (1 Camp.

329) the stipulation was for a half of the gross earnings (which were proportionate to the labour done), and Lord Ellenborough held that to be very different from a participation in profit and loss. This was followed in *Pott v. Eyton* (3 C. B. 32) (where the Court erred in stating that Lord Eldon had acted on his dictum). See also *Barry v. Nesham* (3 C. B. 641). Dr. Story (who was very inaccurate, and frequently borrowed citations without verifying the references, or acknowledging the source from which he borrowed them) cites in support of Lord Eldon's dictum no less than fifteen cases, in which the only question was as to partnership as between the parties, and five others, in which the existence of a partnership was not in question at all.

The only case in which the rule, recognised and acted upon in *Waugh v. Carver*, has been materially infringed, is that of *Cox v. Hickman* (8 H. L. C. 268; 18 C. B. 617; 3 C. B., N. S., 523); where the House of Lords, overruling the decision of the Court below, held that the creditors of an insolvent firm did not, by carrying on the business in the names of trustees for the purpose of liquidating their debts, incur responsibility as partners, but that the trustees who actually conducted the business were the only persons responsible, and were responsible as principals. We have not space for a criticism of the judgments of Lords Cranworth and Wensleydale in that case, and can only observe, that if ever there can be a case in which the persons who ostensibly carry on a business are only agents, and those who participate in the profits are principals, it is when trustees under a deed of arrangement carry on the business of an insolvent for the benefit of his creditors; and that if creditors, who have the right to wound up business, think fit to carry it on for their own benefit, there is no ground of policy or law on which they can found a claim for exemption from liability.

Nothing can more conclusively demonstrate the unsoundness of the proposed alteration of the law of partnership than the pertinacity with which its supporters refuse to consent to a provision for giving notice to the world that a given business is carried on under the protection of the proposed law. Amendments with this view are to be proposed in committee, but we trust that they will be superseded by the rejection of the bill in the other House.

## PARLIAMENTARY PAPERS.

### OFFICE OF LAND REGISTRY.

*Return of the Number of Applications for Registration of any Estates with or without an indefeasible Title.*

FROM the 15th October, 1862, the day of opening the Office of Land Registry, up to the 1st March, 1864, the date of the last return made to Parliament, the number of applications was 65. From the 1st March, 1864, up to the 20th April, 1865, the number of applications is 211, making together 276.

The number of land certificates granted, 32.

The fees of the office are paid by stamps. The value of the stamps lodged in the office in payment of fees is 600*l*.

B. SPENCER FOLLETT, Registrar.

### CHANCERY REGISTRAR'S OFFICE.

*Return of all Applications to obtain a Declaration of Title under the Act 25 & 26 Vict. c. 67.*

None.

CECIL MONRO,  
Senior Registrar of the Court of Chancery.

## Court Papers.

## EQUITY SITTINGS, TRINITY TERM, 1865.

Before the LORD CHANCELLOR.

At Westminster.

Thursday .. May 25 Appeal Motions and Appeals.

At Lincoln's Inn.

Friday ..... 26 Petitions and Appeals.  
 Saturday ..... 27 Appeals in Bankruptcy and Appeals.  
 Monday ..... 29 } Appeals.  
 Tuesday ..... 30 }  
 Wednesday .... 31 Appeals in Bankruptcy and Appeals.  
 Thursday .... June 1 Appeal Motions and Appeals.  
 Friday ..... 2 Appeals.  
 Saturday ..... 3 Appeals in Bankruptcy and Appeals.  
 Monday ..... 5 } Appeals.  
 Tuesday ..... 6 }  
 Wednesday .... 7 Appeals in Bankruptcy and Appeals.  
 Thursday ..... 8 Appeal Motions and Appeals.  
 Friday ..... 9 Appeals.  
 Saturday ..... 10 Appeals in Bankruptcy and Appeals.  
 Monday ..... 12 } Appeals.  
 Tuesday ..... 13 }  
 Wednesday .... 14 Petitions, Appeals in Bankruptcy,  
 and Appeals.  
 Thursday ..... 15 Appeal Motions and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Westminster.

Thursday .. May 25 Appeal Motions.

At Lincoln's Inn.

Friday ..... 26 { Appeal Motions, Petitions in Lunacy,  
 Appeal Petitions, and Appeals.  
 Saturday ..... 27 }  
 Monday ..... 29 } Appeals.  
 Tuesday ..... 30 }  
 Wednesday .... 31 Appeals in Lunacy, Appeal Petitions,  
 and Appeals.  
 Thursday .... June 1 Appeal Motions and Appeals.  
 Friday ..... 2 }  
 Saturday ..... 3 } Appeals.  
 Monday ..... 5 }  
 Tuesday ..... 6 Appeals from the County Palatine of  
 Lancaster and Appeals.  
 Wednesday .... 7 Appeals.  
 Thursday ..... 8 Appeal Motions and Appeals.  
 Friday ..... 9 Petitions in Lunacy, Appeal Petitions,  
 and Appeals.  
 Saturday ..... 10 }  
 Monday ..... 12 } Appeals.  
 Tuesday ..... 13 }  
 Wednesday .... 14 }  
 Thursday ..... 15 Appeal Motions and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Westminster.

Thursday .. May 25 No Sittings.

At Chancery-lane.

Friday ..... 26 Motions and General Paper.  
 Saturday ..... 27 { Petitions, Short Causes, Adjourned  
 Summons, and General Paper.  
 Monday ..... 29 }  
 Tuesday ..... 30 } General Paper.  
 Wednesday .... 31 }  
 Thursday .... June 1 Motions and General Paper.  
 Friday ..... 2 General Paper.

Saturday ..... 3 { Petitions, Short Causes, Adjourned  
 Summons, and General Paper.  
 Monday ..... 5 }  
 Tuesday ..... 6 } General Paper.  
 Wednesday .... 7 }  
 Thursday ..... 8 Motions and General Paper.  
 Friday ..... 9 General Paper.  
 Saturday ..... 10 { Petitions, Short Causes, Adjourned  
 Summons, and General Paper.  
 Monday ..... 12 }  
 Tuesday ..... 13 } General Paper.  
 Wednesday .... 14 }  
 Thursday ..... 15 Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Westminster.

Thursday .. May 25 { Motions, Adjourned Summons, and  
 General Paper.

At Lincoln's Inn.

Friday ..... 26 { Petitions, Adjourned Summons, and  
 General Paper.  
 Saturday ..... 27 { Short Causes, Adjourned Summons,  
 and General Paper.  
 Monday ..... 29 }  
 Tuesday ..... 30 } General Paper.  
 Wednesday .... 31 }  
 Thursday .... June 1 { Motions, Adjourned Summons, and  
 General Paper.  
 Friday ..... 2 { Petitions, Adjourned Summons, and  
 General Paper.  
 Saturday ..... 3 { Short Causes, Adjourned Summons,  
 and General Paper.  
 Monday ..... 5 }  
 Tuesday ..... 6 } General Paper.  
 Wednesday .... 7 }  
 Thursday ..... 8 { Motions, Adjourned Summons, and  
 General Paper.  
 Friday ..... 9 { Petitions, Adjourned Summons, and  
 General Paper.  
 Saturday ..... 10 { Short Causes, Adjourned Summons,  
 and General Paper.  
 Monday ..... 12 }  
 Tuesday ..... 13 } General Paper.  
 Wednesday .... 14 }  
 Thursday ..... 15 { Motions, Adjourned Summons, and  
 General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Westminster.

Thursday .. May 25 Motions.

At Lincoln's Inn.

Friday ..... 26 Petitions and Causes.  
 Saturday ..... 27 Short Causes and Causes.  
 Monday ..... 29 }  
 Tuesday ..... 30 } Causes.  
 Wednesday .... 31 }  
 Thursday .... June 1 Motions and Causes.  
 Friday ..... 2 Petitions and Causes.  
 Saturday ..... 3 Short Causes and Causes.  
 Monday ..... 5 }  
 Tuesday ..... 6 } Causes.  
 Wednesday .... 7 }  
 Thursday ..... 8 Motions and Causes.  
 Friday ..... 9 Petitions and Causes.  
 Saturday ..... 10 Short Causes and Causes.

Monday.....	12	} Causes.
Tuesday.....	13	
Wednesday ....	14	
Thursday .....	15	Motions and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. Wood.*

*At Westminster.*

Thursday .. May 25 Motions.

*At Lincoln's Inn.*

Friday .....	26	General Paper.
Saturday .....	27	} Petitions, Short Causes, Adjourned Summons, and General Paper.
Monday.....	29	
Tuesday.....	30	} General Paper.
Wednesday ....	31	
Thursday....	June 1	Motions and General Paper.
Friday .....	2	General Paper.
Saturday .....	3	} Petitions, Short Causes, Adjourned Summons, and General Paper.
Monday.....	5	
Tuesday .....	6	} General Paper.
Wednesday ....	7	
Thursday .....	8	Motions and General Paper.
Friday .....	9	General Paper.
Saturday .....	10	} Petitions, Short Causes, Adjourned Summons, and General Paper.
Monday.....	12	
Tuesday.....	13	} General Paper.
Wednesday ....	14	
Thursday .....	15	Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

## EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

EASTER TERM, 1865.

### FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Arthur Wightman, who served his clerkship to Messrs. W. & B. Wake, of Sheffield, and Messrs. Patison & Wigg, of London.

2. Leslie Hunter, who served his clerkship to Messrs. J. & J. H. Linklater & Hackwood, of London.

3. Francis Roper Larken, who served his clerkship to Mr. Robert Toynbee, of Lincoln, and Messrs. Scott & Co., of London.

4. Edmund Archibald Stamp, who served his clerkship to Mr. Edmund Stamp, of Honiton, and Messrs. Robinson, Barlow, & Bowling, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Wightman, the Prize of the Honourable Society of Clifford's Inn.

To Mr. Hunter, one of the Prizes of the Incorporated Law Society.

To Mr. Larken, one of the Prizes of the Incorporated Law Society.

To Mr. Stamp, one of the Prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

John James Amos, who served his clerkship to Mr. George Amos, of Wye, Kent, and Messrs. Eyre & Lawson, of London.

Thomas Bury, who served his clerkship to Mr. Thomas Bennion Acton, of Wrexham, and Messrs. Brooksbank & Galland, of London.

Watson Robert Jones, who served his clerkship to Mr. Joseph Bridgman, of Chester.

James Biggs Porter, who served his clerkship to Mr. H. F. T. Miller, of Frome; Mr. William Dunn, of Frome; and Messrs. Whitakers & Woolbert, of London.

Hugh Tilsley, who served his clerkship to Mr. Paul Octavius Haythorne Reed, of Bridgwater.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes or certificates of merit if they had not been above the age of twenty-six:—

1. Charles Leonard Mesnard.
2. Frederick Richard Kilvington.
3. John Paul Poncione, jun.
4. William Smale.

The number of candidates examined in this term was 112; of these 109 were passed, and 3 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,  
London, May 5, 1865.

## Imperial Parliament.

### HOUSE OF LORDS.—Thursday, May 4.

#### RECORD OF TITHE (IRELAND) BILL.

*The Lord Chancellor*, in moving the second reading of this bill, said that no measure had conferred a greater measure of benefit than the act of 1848. Under it immense sales of encumbered land had taken place to the amount, it was computed, of 23,000,000*l.*; but the act had this effect, that after the incumbered land was sold and a parliamentary title given, the function of the act ceased, and there was no provision for preventing the land falling again into its previous state of embarrassment, by reason of subsequent transactions. This defect was pointed out by the commission of 1857, in whose report it was stated:—

"Great as are the benefits which the Incumbered Estates Court has conferred upon titles in Ireland, it is a remarkable circumstance that there is no provision for perpetuating and continuing as to future transactions the parliamentary title obtained upon a purchase from that Court. The title is unimpeachable as to all transactions prior to the time of purchase, but immediately after the purchase the transfer of the land becomes subject to the general law; and as to all transactions taking place after the purchase, the title is liable to become again involved in complications and embarrassments similar to those from which it was relieved by the sale under the Incumbered Estates Act. Permanent simplification of title and simplicity of transfer are not attained by the act, and retrospective investigation of the title becomes again necessary . . . . The system, therefore, which we have recommended is required not less for Ireland than for this portion of the United Kingdom, while at the same time the facilities for its introduction there are much greater than in this country."

Unfortunately, in 1858, when the present Landed Estates

Court was established, though many improvements were introduced, yet the particular improvement referred to was not allowed to find place, and there was no machinery by which the title and subsequent transactions might be recorded and kept in a simple state. The difficulty in this respect was removed in respect to England by the act he introduced in 1862, and the object of the present bill was to adapt to Ireland the machinery and regulations so far as they related to the record of title. Before he proceeded to explain the manner in which this was to be done, it would not be unreasonable for him to refer to the operation of the act of 1862, which was now working in an advantageous manner, and there was every reason to expect that those who availed themselves of it would become more numerous every year. From the 15th October, 1862, to the 1st March, 1864, the date of the last return to the House of Lords, there were 65 applications. These applications comprised about 5000 acres of land, consisting largely of very valuable building land, of an estimated value exceeding 1,500,000*l*. From the 1st March, 1864, to the 30th April, 1865, the applications had been 216, making together 281. The number of acres comprised in the 216 applications exceeded 25,000, and he had no hesitation in saying that the value very considerably exceeded the value of the 65 cases, making the total value exceed three millions. There was no difficulty in working the measure. Their Lordships were aware that there was an association in Dublin, presided over by a noble duke, and intitled the "Registration of Title Association. In an address presented to the late Lord Lieutenant of Ireland, that association stated:—

"We feel that the insecurity, delay, and expense incident to the present system of conveyancing are a hindrance in the transaction of our private affairs, seriously reducing the value of landed property in Ireland, and obstructing the free investment of capital in land and landed securities. We are of opinion that the Landed Estates Court, though affording some alleviation in the case of large estates, fails to provide an effectual remedy for many of the evils complained of. Titles which, at considerable expense and delay, have been cleared of complexities by being passed through that court, are left to be dealt with subsequently under the same system of conveyancing which induced those complexities, and consequently in a short period of time become embarrassed and deteriorated by similar accumulations. We, therefore, think that the Landed Estates Court Act requires to be supplemented by some measure which will enable future dealings with land to be conducted with security, expedition, and economy."

The court had been conducted with so much wisdom, care, and prudence, that there had been hardly a single mistake in its proceedings. The bill enacted, that the conveyance or declaration of title should be entered on a record of title, and that there should be indorsed upon it a minute of every one of the subsequent transactions. In that way the record would become an investment of great value, and the state of the title might be ascertained at any time with the greatest facility. There would be a provision enabling the Court to grant certificates of title, and this power would be extended, so that the Court would give a declaration of title of every description of estate or interest, except in the case of short leases at rack-rents. The great object of the bill would be to enable the Court to receive evidence of ownership, and to declare it judicially, thereby simplifying the title to every description of estate. All transfers must be brought into court, and completed in court, and parties would be released from the obligation of registering deeds of assurance, which at present entailed considerable inconvenience and expense, and at the same time very onerous searches. He anticipated that great advantage would result in Ireland from such a record of title as the bill proposed, and to prove that the system was appreciated, he would only refer to the case of South Australia, where the number of voluntary applications for registering titles had increased from 184 in 1868 to 1138 in 1864. When the mode of dealing with land, which he had described, became generally known, and the advantageous nature of the transactions within the court was contrasted with the transactions which took place outside it, he predicted with the utmost confidence that the increase of business would be probably in a greater ratio than that to which he had already referred. He trusted, then, there would be no objection to the second reading of the bill, but that the

measure would be received as the necessary completion of that useful institution—the Landed Estates Court. He begged to move that the bill be now read a second time.

Lord *St. Leonards* said that the case of Ireland and England, with regard to the transfer of property, was entirely different. In Ireland landed property might be brought into the Landed Estates Court, where it would be sold, and a perfect title given. And besides, there was a General Registration Act, which had long been in operation there, and which had been attended with very beneficial results. But England stood upon very different ground with respect to the sale of landed property, and the creation of an indefeasible title. All that we had here was this—all the charges which were likely to be made, independently of actual execution of deeds, were, under various acts of Parliament, brought into one office; and, therefore, it could be easily ascertained by any person, upon payment of 1*s.*, that a title was clear. The difference between England and Ireland which he had pointed out was so great, that what would suit England would not suit Ireland. The nature of this bill was, in a few words, to destroy all conveyancing and dealing with property throughout Ireland, as between owners and ordinary solicitors; it was to put a stop to the whole transfer of property as it was now conducted, in order to take it into a court which had been constituted for other purposes, which had enough to occupy its time, and which would have this additional burthen thrown upon it, and it would thus become the great conveyancing court of Ireland. Nothing could be more injurious to Ireland than that. The bill struck at the root of a useful system, and was open to great objection. No one had worked harder than himself to simplify the transfer of property in Ireland, and no one could feel a greater interest in the subject; but he could not regard the present measure as a wise or well-considered step in that direction.

The Earl of *Donoughmore* wished to remind his noble and learned friend, that the bill was not a compulsory measure. It had been carefully considered, and was regarded as highly beneficial by the landed interest of Ireland.

The Marquis of *Clanricarde* said that the Incumbered Estates Act had been of great use in regard to titles; but that in a few years, in consequences of the charges and incumbrances incident to landed estates, matters would fall into confusion without some such measure as the present. He should warmly support the bill, as being calculated to render a great service to the proprietors of land.

After a few words from the Earl of *Belmore*,  
The bill was read a second time.

#### MARRIED WOMEN'S PROPERTY (IRELAND) BILL.

Earl *Belmore* moved the second reading of this bill, which had for its object to assimilate the laws of the two countries as to certain points connected with the property of married women.

Lord *St. Leonards* gave his entire concurrence to the measure; and

The bill was read a second time.

#### COMMON LAW COURTS (FEES) BILL.

The House went into committee on this bill, and some conversation, conducted in a tone inaudible in the gallery, took place across the table between the *Lord Chancellor* and Lord *Chelmsford*. Ultimately the bill passed through committee, and was reported, without amendment, to the House.

Friday, May 5.

The Common Law Courts (Fees) Bill was read a third time, and passed.

Monday, May 8.

#### STRIKES AND LOCK-OUTS.

Lord *St. Leonards* laid on the table a bill to establish equitable courts of conciliation to settle disputes between masters and men. He had no great hopes that any measure for settling disputes by arbitration would work well in practice. Nobody denied the right of the men to strike. If conducted without intimidation, a strike was perfectly legal. He was satisfied that no attempt could be wisely made to regulate wages by law, and the area over which legislation could operate in this matter was very limited. If anything could be done in that direction at all, it must be by bringing the masters and the operatives into friendly communication, and inducing both to consider together what was for their com-



mon benefit. In France, courts of conciliation for dealing with the differences arising between masters and men had existed since 1806. Originally there was a council and also a sub-committee, or bureau de conciliation. Before that sub-committee every single dispute between master and man was taken, and if they could not settle it, the matter was then taken before the council. When the revolution of 1848 broke out, a great change in the system occurred, for then the masters and the men were put upon an equality, and a vast number of operatives being introduced into the council, the scheme failed. Then came the plan now in operation, which placed the matter on a very different footing. The president and vice-president of the court were nominated by the Emperor, and a more restricted qualification was required both from the masters and the men who were to be electors. The masters were required to be patentes, and the workmen to be twenty-five years of age, to have been workmen for three years, and to have resided in a particular district for three years. The qualifications for a seat in the council were thirty years of age, the capacity to read and write, and the qualification of an elector. There was great authority for the establishment of courts of conciliation, for three different select committees had at different periods reported in favour of such a measure. There were enactments in existence which admitted of arbitration between masters and operatives, but very few persons seemed to be aware of them, and they had almost entirely ceased to have operation. The 5 Geo. 4, c. 66, was still law, and under it arbitration might be resorted to on the subjects of dispute between masters and workmen in any trade or manufacture in Great Britain or Ireland: disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes respected the payment of wages as agreed upon, or the hours of work as agreed upon, &c.; disputes arising out of or touching the particular trade or manufacture, or contracts relative thereto, which could not be otherwise adjusted. But the parties should not establish a rate of wages, at which the workmen should in future be paid, unless with the mutual consent of both master and workmen. The bill which he now intended to lay on the table would enable masters and men, if unanimous, to apply to the Crown for a license, empowering them to establish a court of conciliation. The masters must for six months be traders in the district in which they applied; the workmen must also be resident for six months, and must have worked in their particular trades for seven years. The number of the council was not to consist of less than ten masters and ten workmen and a chairman, and no member of the council was to adjudicate in any case in which he was interested. Powers would be given to them, when a case was submitted to them by both parties, to make an award.

The bill was then read a first time.

#### COURTS OF JUSTICE BUILDING BILL.

The bill was read a third time. On the question that the bill do pass.

Lord St. Leonards moved the omission of clause 16, allowing the Lord Chancellor to purchase or redeem Chancery compensations with the moneys forming funds belonging to the suitors of the Court of Chancery in addition to the one million of stock previously authorised to be taken from the same funds.

The Lord Chancellor said the fund in Chancery was charged with certain annuities to persons, the greater portion of whom were advanced in years. It was proposed to take from the fund a million of stock, and then the residue, with another fund that was available, could be applied in redeeming the annuities.

The Earl of Derby said the question was, whether under the clause they were not taking more from the Suitors' Fund than the bill professed to do. It was upon that point he should like to have some explanation.

The Lord Chancellor said he would repeat the figures. The Suitors' Fund consisted of 1,991,000*l.* Consols. Besides that there was a fund of more than 200,000*l.*—he believed it was 240,000*l.*—which had arisen from the surplus fees invested under the direction of the Court. The operation which was proposed was this:—From the 1,991,000*l.* stock a million would be taken, which would leave a surplus of 991,000*l.* Consols. To that surplus would be added the second fund of which he had spoken—say 200,000*l.*, which would make

491,000*l.* Consols. All the money required for the redemption of the compensations and annuities was 4371,000*l.*, and, therefore, the 491,000*l.*, of which he had spoken, would be ample for the purpose. That would discharge every kind of incumbrance affecting the funds, and would leave a million of stock perfectly free.

After a few words from Lord St. Leonards and the Earl of Derby, the amendment was negatived without a division.

Lord St. Leonards next moved the omission of clause 22, which, he stated, proposed to take from the Chancery suitors the value of the master's offices (which were built at the expense of the Suitors' Fund, and were now vested in the Lord Chancellor upon trust to sell and pay the proceeds to the Suitors' Fund), and to pay the money to the Consolidated Fund, so as to form part of the 200,000*l.* which the Government were to pay towards the expenses of the new court.

The Lord Chancellor said that the Government were about to become the purchaser of these master's offices and other offices, every claim being extinguished by the sum of 200,000*l.*, for which the Government proposed to make themselves responsible.

Lord Chelmsford said, that whether the offices were treated as buildings or treated as money, it was plain that they belonged equally to the Suitors' Fee Fund. But the Government proposed to help themselves to these buildings as part of their contribution, ignoring the liability that attached to them. It would, therefore, be unjust to allow the claims to remain in the bill.

The Lord Chancellor said he had explained more than once the course which the Government proposed to take. It would be very much shorter to take the houses than to follow the roundabout process of selling them and paying over the proceeds to the Suitors' Fee Fund, from which a certain amount was then to be withdrawn.

Their Lordships then divided.	The numbers were—
Contents .. .. .	46
Non-contents .. .. .	47

Majority .. .. .	1
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The clause was accordingly struck out.

The bill then passed.

#### COURTS OF JUSTICE CONCENTRATION (SITE) BILL.

On the motion that this bill be read a third time,

Lord Redesdale moved an amendment in clause 14, by striking out the words "bridge over or." A bridge over the Strand would at best be a most unsightly object, and an impediment to the traffic of that crowded thoroughfare.

The Lord Chancellor did not admit that such a structure must necessarily be either an ugly object or an obstruction; although it might be so treated as to become both. But the impossibility would hardly warrant them in striking out the words.

Lord Redesdale held it utterly impossible that any bridge could be carried across the Strand without being a disfigurement. No architect would venture to propose such a thing.

The amendment was negatived.

Lord Redesdale moved a new clause after clause 18, in order to enable the public to know what would be the cost of this great speculation, and how the ground was proposed to be occupied. At present they had not the slightest idea of either. He proposed that no notice should be given of the intention to take any property till plans and estimates were prepared of the cost and construction of the buildings, and the sanction of Parliament thereto obtained. His own impression in regard to the site was, that it would not be found very advantageous. There was a very considerable fall from Carey-street to the Strand, and this building would, no doubt, have more fronts than one. It would be utterly impossible that two of them could, from the nature of the ground, have an uniform elevation. He thought it desirable that both Houses of Parliament should be made acquainted with the extent of land required, how the plan was to be carried out, and the cost of the structure, before anything was finally done.

The Lord Chancellor said that it would require the spirit of prophecy to ascertain with certainty what would be the actual expense; but, so far as calculations and estimates of the cost were concerned, they had already been made. He had before stated that an estimate of the value of the buildings on the proposed site had been made several years ago.

That estimate was afterwards carefully revised by a commission, who reported in 1859. Every part of that estimate had again been gone over, and the conclusion arrived at was, that the sum required would be 1,500,000*l*. But they were not without fresh resources. In addition to the Suitsors' Fund, there was a tax to be imposed in the shape of fees, which might be augmented to double the amount.

The Earl of Derby thought the course recommended by the noble Lord, the chairman of committees, was suggested by the most ordinary consideration of prudence in regard to an undertaking of that magnitude. Although there might already have been great delay in connexion with that measure, that was no reason for imprudent haste now. One part of the bill was intended to sanction the appointment of a commission, which should decide on the plan. The estimate for the purchase of the land was 750,000*l*.; but for the buildings to be erected on that land, there was no estimate. The whole thing was an entire guess. Until they determined what the buildings were to be, it was nonsense to talk of an estimate.

The Lord Chancellor explained, that he had said the commission would first have to determine the number of courts and offices required, together with their dimensions.

The Earl of Derby continued.—Inasmuch as it was alleged that all the existing buildings were absolute rubbish, and worthless, he could not understand why the plan might not be prepared, even with the buildings on the ground. He should be astonished if his own architect were to tell him, that his old stables must be pulled down, and his horses turned out, before he could proceed with a plan for building new stables.

Earl Granville said the noble Lord overlooked the fact, that the site of his old stables would be his own land, whereas in the present case the land belonged to other persons.

The Earl of Derby.—But by the bill they made the land their own by taking compulsory powers to buy it, and the only question was as to giving notice to the parties.

Lord Redesdale could not see why it was necessary to have the ground cleared before they laid out the plan. In reference to the necessity of an estimate for a public building of this character, he hoped that their Lordships would recollect what the Houses of Parliament cost, and what it was at first said they would cost. He believed that three times the amount of the original estimate was spent on them. To proceed with a work of the magnitude now proposed without any estimate whatever appeared to be a great act of imprudence.

After some conversation, the words requiring the sanction of Parliament were omitted, and the House then divided on the proposed new clause. The numbers were—

Contents .. .. .	47
Non-contents .. .. .	44
Majority for the clause ..	3

The bill as amended was then passed.

#### JURIES (IRELAND) BILL.

The Marquis of Westmeath, in moving the second reading of this bill, explained that its object was—first, to allow the verdict of three-fourths of a jury to be taken in cases of high treason, murder, petty treason, sedition, or any other felony or misdemeanour; and, secondly, to give to the Attorney-General the power to order a new trial where there had been a disagreement of the jury, and to change the venue in those cases.

Earl Granville thought that their Lordships would hardly be prepared in a thin House to pass a bill introducing such important changes in the law.

Lord Kingsdown approved that part of the bill which proposed to allow a majority of the jury to give a verdict, and he would therefore vote with the noble marquis if he divided the House.

The Earl of Donoughmore could not support the first part of the bill, for altering the jury system, but he thought the second part, providing for a change of venue, well deserved the attention of the Government.

The Lord Chancellor said that the statute under which the venue was changed in the case of Palmer's trial enabled such a change to be made for the purpose of avoiding delay, and he was under the impression that that statute applied to Ireland also. If it were the case that the same power did not exist in Ireland, it would be a very proper subject of con-

sideration whether a measure should not be framed with the object of remedying the defect.

Lord Chalmersford did not think that any such power of changing the venue existed in Ireland, and he agreed that it was desirable that the power should be given. It should not, however, be given to the law officers, but to a court of law.

After a few words from Lord Belmore,

The Lord Chancellor said the matter should be taken into consideration.

Upon that assurance of the Lord Chancellor, the bill was withdrawn.

The County Courts Equitable Jurisdiction Bill passed through committee.

Tuesday, May 9.

The royal assent was given by commission to an Act for amending the Law of Evidence and Practice in Criminal Trials.

The Record of Title (Ireland) Bill passed through committees *pro forma*.

The report of amendments in the County Courts Equitable Jurisdiction Bill was brought up and agreed to.

#### HOUSE OF COMMONS.—Tuesday, May 9.

##### THE BANKRUPTCY LAWS.

Mr. Paull asked the Attorney-General whether it was the intention of her Majesty's Government, at the earliest possible period, to submit to Parliament a measure for the amendment and consolidation of the bankruptcy laws; and, if so, whether such measure would provide for the abolition of the power of imprisonment of debtors, to compel the payment of money under any judgment or order of any court, including county courts and other courts for the recovery of small debts.

The Attorney-General said it was undoubtedly the intention of her Majesty's Government at the earliest period at which it was possible to do so, consistently with due attention to the importance of the subject, to submit to the House a measure for the amendment and consolidation of the bankruptcy laws. It was not likely that could take place during the present session. As to county and other courts, the hon. member was aware that the committee had recommended the total abolition of the power of imprisonment for debt. That subject, therefore, would be considered with all the authority the recommendation of the committee could give, but of course it was not in his power to say what the result would be.

In reply to Mr. Heygate,

Mr. Paull said, after the answer of the Attorney-General, he should take steps to withdraw his bill from the orders.

##### THE REGULATION AND INSPECTION OF COAL MINES.

Mr. Ayrton moved for and obtained a select committee to inquire into the operation of the Act for the Regulation and Inspection of Mines. The inquiry was not to be extended to metaliferous mines.

##### PRIVATE BILL COSTS BILL.

The Lords' amendments to this bill were considered and agreed to.

Wednesday, May 10.

##### COUNTY VOTERS REGISTRATION BILL.

On the motion for going into committee on this bill, Mr. Hunt moved, "That it be an instruction to the committee, that they have power to extend the provisions of the bill relating to the powers and duties of revising barristers to the case of registration in cities and boroughs." He explained, that it was not his intention to extend the provisions of the bill generally to borough registration. His object was to provide, that the revising barrister should make his order as to costs at the time of hearing; that he should have power to commit for the day for contempt of court; and to make other slight alterations in the existing law.

The motion was agreed to, and the House went into committee on the bill.

Clauses 1 and 2 were agreed to.

On clause 3,

Mr. C. W. Wynn moved as an amendment, the insertion of the following at the beginning of the clause:—"The clerk of the peace of every county shall, on or before the 1st June

in each year, transmit to the overseers of every parish or township within such county a sufficient number of copies of the part or parts of the register relating to such parish or township, and the overseers."

The clause as amended was agreed to.

Clause 7 was struck out, an amended clause to be substituted.

Clauses 8 and 9 were agreed to, with verbal amendments.

On clause 10, which provided that the costs allowed on frivolous objections should not exceed 3*l*.,

Mr. C. W. Wynn moved that the sum be 5*l*.

The committee divided. The numbers were—

For the amendment .. .. .	111
Against .. .. .	108

Majority for .. .. . 5

The clause as amended was agreed to.

On clause 12, giving revising barristers power to commit for contempt of court,

Mr. J. J. Powell objected to the clause as unnecessary.

Mr. Collins was of a different opinion. He knew an instance where the barrister was not only called the foulest names in open court, but had even sticks thrown at him.

The clause was struck out, after some discussion, it being considered that the power proposed to be granted was too large, and that it was unnecessary. Clauses 13 and 14 were also negatived without a division. The remaining clauses of the bill were agreed to.

Mr. Hunt moved a new clause in lieu of clause 7, the object being to enable persons to have their names placed or retained on the list of voters, by making a declaration of their qualification before a magistrate, instead of attending before the barrister.

Mr. J. J. Powell objected to the clause, on the ground that it opened a door to fraud, and moved its rejection.

After some discussion the committee divided, when there were—

For the clause .. .. .	110
Against .. .. .	99

Majority .. .. . 11

The clause was accordingly added to the bill.

Mr. Hunt the proposed a clause prohibiting revising barristers from holding any courts for the revision of the lists of county voters before the 20th September.

The clause was agreed to, and was added to the bill.

Mr. Hunt then moved a clause enabling a revising barrister to have removed from his court any one interrupting the proceedings thereof.

The clause was agreed to, and was added to the bill.

The schedules, with some verbal alterations, were agreed to.

The bill was then reported to the House.

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## THE JURIST.

LONDON, MAY 20, 1865.

WE lately took occasion to consider the effect of the Statute of Limitations on the title of the person in possession at the time when the title of the once rightful owner becomes extinguished by adverse possession. (Ante, p. 151). In doing so, we confined our attention to the effect of adverse possession on a legal title. The case of a merely equitable title is different in its essential circumstances from that of a beneficial legal title, and is also governed by different enactments, the operation of which deserves attentive consideration. Mr. Hayes, referring to the statutory limitation of equitable rights, observes that the rule of equity which existed before the statute regarded a mortgagee in possession, for example, as being, in the words of Lord Eldon, quasi a trustee for just nineteen years, three hundred and sixty-four days, and twelve hours, short by five minutes; and that "the equitable limitation by analogy was rendered complete when it was held, not only that an equity might be barred as between mortgagor and mortgagee—as between the legal owner in possession and the equitable claimant—but even that a preferable right to the equity of redemption might be gained by a third person, as against the mortgagee, by length of adverse beneficial enjoyment. Thus, if A. mortgaged to B., and if afterwards, C., a stranger, obtained the beneficial possession, receiving the rents, and dealing with the property as owner, and continued so to enjoy for twenty years, the equity of redemption at the end of that period was *virtually transferred* from A. to C. This was the point, and the single point, ultimately decided in the great case of *The Marquis of Cholmondeley v. Clinton* (4 Bligh., P.R., O.S., 1, 38, 99, 105). It was there considered, that as a very large proportion of the property of the kingdom was equitable (the legal estate being vested in mortgagees or trustees in the majority of titles), it would have been a most dangerous doctrine to hold, that enjoyment between mere equitable claimants, the legal estate being outstanding, could never be adverse, and that no length of time could effect a bar, notwithstanding that the person who had been suffered to enjoy owed no duty to the claimant. The result of this state of the law was, that equitable possession, if it may be so termed, was capable of ripening into a good title at an earlier period than legal possession; and that the mere accident of the legal estate being outstanding, might render the adverse enjoyment effectual, where, if the title had been purely legal, the claimant would not have been barred. But the new statute, by not only providing an express bar to equitable claimants (ss. 24, 25, 26, 27, 28), but also subjecting legal and equitable remedies to corresponding restrictions, has established uniformity as to both the positive force of the bar and the period of limitation. This assimilation could not have been effected without the abolition or the limitation of real actions which were maintainable after the remedy by eject-

ment was lost. There was obviously, however, considerable difficulty before the new statute in extending the principle of legal limitation to cases like that of *The Marquis of Cholmondeley v. Clinton*; and the final decision, however authoritative, may be thought to stand more upon convenience than principle. It involved an obvious anomaly. Where there was wrongful possession at law of a certain duration the remedy was barred, but the right was not transferred. And the wrongdoer's title, which began with the wrong, became established only because he was in possession, and could no longer be evicted; but, in the case of the mere equity, the adverse claimant had not a shadow of title till the clock had actually announced the expiration of the twenty years, when the equity at once vested in him. The most cursory reference to the nature and course of an adverse legal title will shew how entirely the *analogy* failed. Even the new law is not free, perhaps, from the difficulty of shifting the equity, or rather of recreating in A. the equity which it extinguishes in B. In order to complete the assimilation to legal titles, we are obliged to consider the adverse equitable claimant as constructively in possession, and as left, by the extinction of the *very* equity, in the unimpeachable possession; but in this there is now less incongruity, since, even in regard to the legal title, the statute admits of constructive dispossession\* (sect. 2)."

It is submitted that the supposed rule, which would involve the incongruity here pointed out, did not exist under the old law, and has not been introduced by the act of Will. 4. The case of *Cholmondeley v. Clinton*, and the alterations introduced by the 24th and 25th sections of the Statute of Limitations, deserve a more attentive consideration. In that case, lands were devised by Samuel Rolle to trustees for 200 years, in trust to raise a portion, and subject to the term, to the testator's only child, Margaret, for her life, with remainder to her first and other sons in tail. Margaret Rolle had only one son, George, Earl of Orford, who in 1781, after his mother's death, suffered a recovery, and limited the land to the use of himself for his life, with remainder to the use of the heirs of his body, with remainder to such uses as he should appoint; and in default of appointment, to the use of the right heir of Samuel Rolle; and he reserved a general power to revoke the uses. In 1724 the term was assigned to a mortgagee, who advanced the portion, and in 1785 the mortgage debt was transferred to Sir Edward Hughes, to whom George, Earl of Orford, appointed the fee as a further security, the term being assigned to a trustee. In 1791 George, Earl of Orford, died without issue, upon which it was considered that the estate descended to Lord Clinton, who was the heir of Samuel Rolle, and not to the heir (ex parte paternâ) of George, Earl of Orford; and Lord Clinton, with the consent of all parties, accordingly took possession of the estates, and settled and mort-

\* Mr. Hayes is here referring to the case of entry upon a vacant possession, where the statute term runs from the entry, and not from the discontinuance of possession by the rightful owner, so that the entry is a constructive dispossession.

gaged them. A doubt having arisen whether the appointment of 1785 did not absolutely defeat the ultimate limitation in the recovery deed of 1781 in equity as well as at law, Horace, Earl of Orford, who was the heir of Earl George, executed in 1794 a deed, by which, reciting that doubt, he granted, released, and confirmed the estate to the trustees of Lord Clinton's settlement, in the same manner as if the appointment of 1785 had not been made. In 1812, twenty-one years after the death of Earl George, the heir and the devisee of Earl Horace filed their bill against the mortgagees of 1785 (to whom interest had been regularly paid by Lord Clinton), Lord Clinton, and his trustees and mortgagee, offering to redeem the mortgage of 1785, and insisting that, under the limitation in the recovery deed, Earl George took an estate by purchase in fee, descendible to his heirs ex parte patrâ, and that the deed of confirmation could not operate beyond its declared object, which was merely to remove the doubt created by the appointment of 1785. Sir W. Grant, M. R., declared his opinion on the questions of construction to be in favour of the plaintiffs, and said that their claim was not barred by lapse of time, for the enjoyment by Lord Clinton had not been in the character of owner of the legal estate, nor under any claim of being so entitled. It was, therefore, not adverse to the mortgagee, who held the estate in trust for the true owner of the equity of redemption, and there could be no disseisin of an equitable estate. (2 Meriv. 171). The cestui que trust could only be barred by barring and excluding the estate of the trustee. A case having been sent to the Queen's Bench on the effect of the limitation in the recovery deed, Sir T. Plumer, at the hearing on the equity reserved, decided against the plaintiffs, both on the question of construction and on that of the effect of adverse enjoyment. (2 J. & W. 1). Upon the appeal to the House of Lords, the discussion was confined to the equitable questions in the case, and the bill was dismissed on the advice of Lords Eldon and Redesdale, that, by analogy to the Statute of Limitations, the adverse possession of an equity of redemption for twenty years is a bar to any other person claiming that equity of redemption.

In *Cholmondeley v. Clinton* the title of the mortgagee had not been barred, and the decision would have been the same if the legal estate had been vested in a trustee upon an express trust; for though, as between the trustee and the cestui que trust, implied and express trusts may stand upon different footings, in a case between two adverse claimants of an equitable interest, to be decided on the analogy of the rule at law, the form of the origin or evidence of the equity cannot be material. (See 4 Bligh, O. S., 35, 116). In the case under consideration, Lord Eldon said, "If A. B. is trustee for C. D., and C. D. mortgages to E. F., and E. F. holds for more than twenty years without admission, would equity permit C. D. to come to redeem after twenty years? To redeem either E. F. or A. B.? Does not A. B. after twenty years become trustee for E. F.?" (Id. 38). Under

the circumstances above detailed, the mortgagee would not have been barred if the stat. 3 & 4 Will. 4, c. 27, and 7 Will. 4 & 1 Vict. c. 28, had been in operation; for the payment of interest by a person in possession claiming to be owner of the equity of redemption, is not the less equivalent to an acknowledgment of the mortgagee's title, because it happens to be made by one who is not the true owner of the equity<sup>o</sup>. So, if a trustee lets a stranger into possession under the belief that he has an equitable title to the possession, a tenancy at will must be implied.

If the statute of Will. 4 had been in force when the case of *Cholmondeley v. Clinton* arose, the decision would have been the same, for the equity of redemption, being an implied trust, would have come within the general enactment of the 26th section, which subjects equitable claims to the same rules as claims at law. But in *Cholmondeley v. Clinton* the mortgagee was defendant, and it was not decided, that because the true owner of the equity of redemption was barred of his remedy against the mortgagee, therefore the party whose wrongful possession had created that bar was thereby put in the place of the late equitable owner, so as to be entitled to maintain a redemption suit against the mortgagee (whose title was not barred). That case by no means warrants the conclusion that has been drawn from it, nor does there seem to be any authority (beyond the remark by Lord Eldon, cited above) for saying that, either under the old law or under the statute, wrongful enjoyment of an equity, not amounting to a bar of the legal estate of the trustee, is a bar of the true owner's equitable title for the benefit of any one but the trustee himself. Analogy is entirely against the proposition, that adverse enjoyment of an equity for twenty years operates as a virtual transfer of the equity to the person who has enjoyed it; it operates, on the contrary, it is submitted, as an extinction of the equity for the benefit of the person who may be able to establish his right at law†. It is true, that under circumstances similar to those in *Cholmondeley v. Clinton*, the mortgagee's case in an action of ejectment, and his defence to a suit for redemption, would not be consistent, for in order to shew that his legal title was not barred by adverse possession, he must shew acceptance of interest within twenty years from the person in possession as owner of the equity of redemption, while, in answer to a suit by that person for redemption, he must insist that he never had a title to the equity of redemption. But this is a difficulty peculiar to the case of mortgagor and mortgagee, and does not affect the general question under consideration. Where the equitable interest which is barred is less than an interest in fee-simple, a claim may plausibly be made by those entitled in remainder or reversion, on the ground that their interests have been accelerated in enjoyment by the destruction of the prior interest.

The doctrine in *Cholmondeley v. Clinton* was founded

\* See *Chinnery v. Evans* (10 Jur., N. S., 855) and *Ames v. Mannering* (26 Beav. 583).

† See *Sand's case* (8ld. 408) and *Burgess v. Wheate* (1 Eden, 177). But see *Downe v. Morris* (3 Hare, 394) and *Young v. Waterpark* (13 Sim. 204; 15 L. J., Ch., 63).

\* But this was not decided.



on reasoning which was applicable to express trusts as much as to equities of redemption. But the act of Will. 4 has made a great alteration in respect of the former, and does not allow any adverse possession which is not a bar to the trustee to bar the cestui que trust under an express trust, except only the adverse possession of a purchaser for value from the trustee, and then the bar is confined to claims against the purchaser and those claiming under him<sup>o</sup>. As between the cestui que trust and the trustee, or mere volunteers in adverse enjoyment, there is no definite and inflexible bar, though equity may still refuse to interfere on any special grounds of acquiescence, delay, or otherwise, in individual cases. But an express equity may of course be barred with the legal estate which supports it, by possession adverse to the trustee as well as to the cestui que trust. (*Burroughs v. McCreight*, 1 Jo. & Lat. 290; 2 Jo. & Lat. 198; *Melling v. Leak*, 16 C. B. 652).

In *Cholmondeley v. Clinton* the judges professed to be guided by analogy to the rule of law; but under the statute courts of equity are no longer at liberty to follow the rules which govern the limitation of legal rights, but are bound by rules expressly framed for the regulation of equitable claims, and differing in cases of express trust from those applicable to legal rights. Relief may, indeed, under the 27th section, be refused to persons who are not barred by the express provisions of the act; but this can only be done on purely equitable grounds of acquiescence, delay, or otherwise, and not on the analogy of a legal rule. (See the distinction pointed out by Lord Cottenham in *Leeds v. Amherst*, 2 Phill. 123). In *Knight v. Bowyer* (2 De G. & J. 443), Lord Justice Turner said that the rules on this subject which apply to ordinary cases, if they apply at all, do not apply with equal force to cases of express trust. In the case of *Malone v. O'Connor* (9 Ir. Eq. Rep. 459) lapse of time was held to be a bar to a claim to an equity under circumstances (too complicated to be here stated) which seem to have been within neither the provisions of the Statute of Limitations, nor any rule of equity against stale demands.

There are, however, many subjects of equitable relief not within the 24th section (which is confined to suits to recover "land," or "rent," as defined in the 1st section, and does not extend to claims for compensation for breaches of trust, waste, recovery of title-deeds, &c.) in the limitation of claims to which courts of equity are still guided by analogy only. Thus, it has been held, that a tenant in tail in remainder is not bound to interfere to prevent equitable waste or to secure compensation for it, during the life of the tenant for life, as he cannot be sure that he will, by surviving the tenant for life, become entitled to the compensation. (*Leeds v. Amherst*, 2 Phill. 117). See *Egg v. Dewey* (10 Beav. 447) and *Re Ashwell* (1 Johns. 112). As to suits for the recovery of deeds, see *Wills v. Doddington* (2 Coll. 73).

\* "It is not very reasonable to suppose that the remedy was intended to be preserved against the trustee, but destroyed against the persons who had received the benefit of the breach of trust." (*Knight v. Bowyer*, 2 De G. & J. 431).

## UNION CHARGEABILITY.

THE following sound and judicious observations on Union Chargeability, by Mr. Serjeant Manning, appeared in "The Athenæum" for May 6:—

A bill has been introduced into the House of Commons, "To provide for the better Distribution of the Relief of the Poor in Unions." This bill was stated to be founded upon a resolution of a committee of the House of Commons, "That any measure for extending the area should embrace provisions for making the whole cost for the poor in each union chargeable on the common fund of the union."

In the debate which took place, on the 28th March, upon the motion for the second reading of this bill, it appears to have been assumed that the proposition contained in the resolution was, in substance, "That any measure for making the whole cost for the poor in each union chargeable upon the common fund of the union, should contain provisions for extending the area of rating." In the present article an attempt will be made to shew that a great and, at the same time, a gratuitous injustice would often result from adopting such an inversion of the precise terms of the resolution.

The *inverted* proposition seems to assume that union chargeability requires an absolute equality of union rating. The consequence of that assumption has been, that those who were strongly impressed with the important benefits which the labouring classes would evidently derive from a non-discriminating union chargeability without distinctions connected with parochial settlement, have regarded those benefits as cheaply purchased by a shifting of burthen which would follow the establishment for all the purposes of a uniform union rating. On the other hand, persons keenly alive to the hardship occasionally inseparable from a change in the incidence of taxation, which would be caused by the introduction of an invariable uniform union rating, have not unnaturally been led to undervalue the benefits to be derived from the establishment of union chargeability.

Let there be two farms in the parishes A. and B., belonging to the same union, the productive value of each farm, after deducting general union rates and other outgoings common to both, being 100*l.* a year; but where the average parochial rates during the four years which have followed the first establishment of a union rating under the Irremovable Poor Act, have been, upon an average, 2*s.* in the pound in A., and 6*s.* in the pound in B. The purchaser of the farm in A. would deduct 10*l.* from the 100*l.*, reducing the clear annual value to 90*l.*, and, at thirty years' purchase, he would give 2700*l.* for the fee-simple, whilst the purchaser of the farm in B. would deduct 30*l.*, and would estimate the value of the fee-simple at 2100*l.* If these two assessments of 2*s.* and 6*s.* were transformed and amalgamated into one union rating of 4*s.* in the pound, the net yearly value of each farm would be 80*l.*, and the fee-simple value of one farm would rise from 2100*l.* to 2400*l.*, whilst that of the other would fall from 2700*l.* to 2400*l.* It would be no answer to say, even if the statement were capable of proof, that the difference in the poor rates of the two parishes had been occasioned by the destructive policy of some former proprietors in A., or by the operations of speculating builders in B.

I venture to suggest, that the whole difficulty might be obviated by enacting that the parishes A. and B. should henceforth pay rates equal to the average of the payments made by them respectively during the last four years—that is, since the Irremovable Poor Act came into operation. Should the amounts so con-

tributed be insufficient to meet the future expenditure of the union, the excess might be charged upon the entire union fund, such charge to be met by an entire rate; and if any surplus resulted from a diminution of the charges upon the new union fund so constituted, such surplus might be applied in reduction of the entire union rate. In either case the desired result would be obtained, and settlement in one parish rather than in another parish within the same union, would become matter of perfect indifference as well to the pauper as to the ratepayers.

Neither this suggestion, nor the provisions of Mr. Villiers's bill, as it now stands, would, it is true, meet the constantly recurring complaints of the inequality of the burthen upon rich and poor parishes. These complaints usually have arisen from confounding the hand by which the rate is paid, with the pocket out of which the amount ultimately comes. If it be worth A.'s while to pay 40*l.* a year for the occupation of a house and shop in Bethnal Green, it is of little consequence that 5*l.* goes to the landlord, and 35*l.* to the support of the poor, whilst B., in the parish of St. James's, pays 35*l.* to the landlord, and 5*l.* to the overseer. Yet it is held up as an intolerable grievance and a flagrant injustice, that in Bethnal Green A. should be summoned and distrained upon for 35*l.*, whilst in St. James's B. can make his peace with the grim official by the payment of 5*l.* only. If the landlord, who in effect pays the heavy poor rate, is aggrieved, it can only be because the burthen has been imposed since he acquired the property. Nor can the tenant reasonably complain, except in cases where the rate has been increased during his occupation, and where that occupation has been under a rent permanently fixed, and where, therefore, he is owner pro tanto. Justice, however, or at least expediency, seems to require that some measure should be adopted, perhaps upon the principle of the above suggestion, with the view of preventing a further divergence in the rates of different parishes.

The stat. 43 Eliz. c. 2, provided for the creation of a fund, by an assessment upon real and personal estate, for the relief of the impotent poor, irrespective of any connexion with the parish in which the persons to be relieved were born, or in which they had resided or had worked. The statute imposed the burthen of relief upon the real and also upon the personal property of the inhabitants. But in the reign of Elizabeth the value of personal property was small in comparison with that of the realty, and the small personal property being chiefly in the hands of the officials, on whom devolved the power of apportioning the burthen, namely, the churchwardens and overseers, personal property was omitted from the rate, and thus wholly escaped taxation. The pretext for this omission was the supposed difficulty of ascertaining the value of personal property—a difficulty which Chancellors of the Exchequer have not been deterred from grappling with, in the matter of income-tax. The vast accession to the numbers of the pauper class, resulting from, or which at least have followed, the increase of trade and manufactures and their fluctuations, had not yet begun to be felt.

Under one of the reactionary statutes enacted shortly after the Restoration (13 & 14 Car. 2, c. 12), indigent persons, though still entitled to present relief in the parish in which they became destitute, were made liable to be removed to the parish in which they were deemed to have acquired a settlement by birth or by their own act. The amount of litigation at quarter sessions and in the Court of King's Bench, arising upon the statute, was enormous, and the decisions in settlement cases called forth special books of reports. One of these cases has been so ably condensed, that it

may fairly be said to rival in brevity the reports in the Year Books. An Englishwoman married a foreigner who had not acquired a settlement, and therefore, although entitled to relief in case of destitution, under the statute of Elizabeth, he was not removable under the statute of Charles. As husband and wife could not be legally separated, both were entitled to continuing relief in any parish in which they might happen to be found in a state of destitution. The husband died, and a question arose in the Court of King's Bench; then presided over by Sir John Pratt, the ancestor of the Marquess Camden, as to the place of settlement of the widow. The case has been thus reported:—

A woman having a settlement,  
Marries a man with none;  
Quere, whether the settlement,  
He being dead, is gone.  
Quoth Sir John Pratt, the settlement  
Suspended doth remain,  
Living the husband, but him dead,  
It doth revive again.

*Chorus of Poine Judges.*

Living the husband, but him dead,  
It doth revive again.

The power of removal created by the statute of Charles, is confessedly the cause of the most severe evils which press both upon the actually and the proximately pauper population, whether those evils present themselves in the shape of actual removal, or in the more insidious as well as the more pernicious form of destruction of cottages, or otherwise. Intra-union removal will be suppressed by the operation of Mr. Villiers's bill as completely, whether a change in the incidence of taxation, apparently as unnecessary as it has been felt to be unjust, is retained or abandoned.

J. MANNING, Q.A.S.

## THE NEW COURTS OF JUSTICE.

### *Protest on the Third Reading of the Courts of Justice Concentration Bill.*

Clause 14. Moved to omit the words "bridges over or." Resolved in the negative.

#### Dissentient—

1. Because these words are introduced for the purpose of sanctioning the erection of a bridge across the Strand, to remedy the inconvenience (inseparable from the proposed site) arising from one of the most crowded thoroughfares in the metropolis being between the Temple and the new courts:

2. Because such a bridge in connexion with the new buildings must be a most unsightly object, if carried across the street in one span, and hardly less so if in any other manner; and will, in the latter case, perpetuate, and perhaps add to, the present Temple-bar obstruction, and the demand for which is as discreditable to the taste of the Templars, who have asked for it, as it will be to that of any authority which may hereafter permit it to be erected.

REDESDALE.

JURIDICAL SOCIETY.—A meeting of this society took place at its rooms, 4, St. Martin's-place, Trafalgar-square, on Wednesday, the 10th instant, W. M. Best, Esq., in the chair; when a paper was read by Mr. C. C. Massey, "On the Exclusion from Evidence before Verdict in Criminal Prosecutions of the Fact of previous Conviction." A discussion ensued, in which the chairman, Sir Patrick M'Colquhoun, Mr. Worsley, Mr. C. Hopwood, and Mr. C. Clark took part.

## Court Papers.

NISI PRIUS SITTINGS, IN AND AFTER  
TRINITY TERM, 1865.

## Court of Queen's Bench.

## In Term.

## MIDDLESEX.

1st sitting, Friday .. May 26

2nd sitting, Thursday, June 1

3rd sitting, Thursday .... 8

## LONDON.

There will not be any sittings  
during term in London.

## After Term.

Friday..... June 16 | Thursday ..... June 20

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

N. B. The Associate's Offices will be closed on Wednesday, the 24th May, being the Queen's Birth-day. Causes for trial at the first sitting must be entered not later than Tuesday, the 23rd May.

## Court of Common Pleas.

## In Term.

## MIDDLESEX.

Friday..... May 26

Thursday ..... June 1

Thursday ..... 8

## LONDON.

The Court will not sit in  
London during term.

## After Term.

Friday..... June 16 | Wednesday ..... June 28

The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Wednesday, May 24, the Queen's Birth-day, the Associate's Office will be closed on that day. Causes for trial at the first sitting in Middlesex must be entered not later than Tuesday, the 23rd May.

## Exchequer of Pleas.

## In Term.

## MIDDLESEX.

1st sitting, Friday.. May 26

2nd sitting, Thursday, June 1

3rd sitting, Thursday .... 8

## LONDON.

There will not be any sittings  
during term in London.

## After Term.

Friday..... June 16 | Wednesday ..... June 28

The Court will sit during and after term at ten o'clock.

Wednesday, the 24th May, being the Queen's Birth-day, the Associate's Offices will be closed on that day. Causes for trial at the first sitting must be entered not later than Tuesday, the 23rd May.

COMMON-LAW CAUSE LISTS, TRINITY TERM,  
1865.

## Court of Queen's Bench.

## NEW TRIALS.

## FOR JUDGMENT.

Camb.—Mainprice v. Westley  
Suffolk—Cowles v. PottsChes.—Same v. Same (Second  
action, Ditto)

— Davies v. Same (Ditto)

## FOR ARGUMENT.

Moved Easter Term, 1864.

Ches.—Hughes v. Birkenhead  
Improvement Commissioners (First action, to be argued with D. Stands over till decision in court of error)

Moved Mich. Term, 1864.

Durham—Ecclesiastical Commissioners for England v. Peart

Monmth.—Symonds v. Pickaley (Not to be argued until after the decision of a similar point in Exchequer Chamber)

Leicester—Keightley v. Cumberland (Stands for arrangement)

Moved Hil. Term, 1865.

Midd.—Austin v. Bunyard  
(Part heard)— Graham v. East & West  
India Dock Co.— Foley v. East & West  
India Dock Co.— Darke v. Grosvenor  
and West-end Railway Terminus Hotel Co. (Limited)— North British Rubber  
Co. (Limited) v. Manchester  
Rubber Co. (Limited).

## Tried during Term.

Midd.—Sichel v. Purdie

## Easter Term, 1865.

Lond.—Ewin v. Lancaster

Lond.—Hedley v. Barlow  
— De Therry v. Lord Fermoy

Bedford—Asher v. Whitelock

Bristol—Green v. Groves

Lancaster—Martin v. Smalley

Liverp.—Reynolds v. Jex

— Smith v. Whitworth

— Lunt v. London and

North-western Railway Co.

— Williams v. Reynolds

Hertford—Crowland v. Allour

Surrey—Newton v. Kershaw

— Richardson v. Locklin

Leeds—Mayne v. Burns

Stafford—Dummock v. North

Staffordshire Railway Co.

Hereford—Mainwaring v.

## Tried during Term.

Midd.—Edwards v. Parker

— Dardoy v. Johnson.

## SPECIAL PAPER.

Those marked thus \* are Special Cases, and thus † De-murrers.

## FOR JUDGMENT.

† Thierry &amp; an. v. Lord Fermoy

\* Worthington v. Sudlow

\* Kemp v. Halliday

## FOR ARGUMENT.

† Hughes v. Birkenhead Improvement Commissioners (Case in New Trial Paper to be argued with this D. stands over).

† Same v. Same (Ditto)

† Davies v. Same (Ditto)

\* Bryant v. Foot (Stands for amendment)

\* Cory &amp; ora. v. Thames Iron Works and Ship Building Co. (Limited)

† Jolwald v. Continental Bank Corporation (Limited) (To stand over till issue of fact tried, unless parties agree to special case)

Brabant v. Sir T. M. Wilson, in re the Copyhold Acts, &amp;c. (Ap. from Copyhold Commissioners)

† Le Strange v. Rome

† Tydeman v. Carne

\* Barber v. Whiteley &amp; an.

† Boulting v. Saul &amp; an.

† Barrett &amp; an. v. Bullock

† Hermiliewicz v. Jay

\* Harvey v. London, Brighton, and South-coast Railway Co.

\* Hill v. Hippisley &amp; ora.

† Swift v. Wilson

† Wyatt v. Great Western Railway Co.

† Darley v. Marson

† Allwater v. Bennett

† Coyne v. Maxwell

\* Adamson v. Duncan &amp; an.

\* Wilson v. Lancashire and Yorkshire Railway Co.

† Saniscovaky v. Stevens.

## ENLARGED RULES.

## First Day.

In re Knowles

Dunlop v. Kitching

In re Blackhurst

Reg. v. Assessment Committee of Durham Poor-law Union

Reg. v. Stone

Reg. v. Travers Twiss, Judge of Consistory Court

Reg. v. Recorder of Northampton

Reg. v. Backhouse

Reg. v. Justices of the West Riding of Yorkshire

Same v. Same.

## CROWN PAPER.

Tewkesbury .... Reg. v. Severn Navigation Commissioners.  
Surrey ..... Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).

Cornwall ..... Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe. (To stand over till judgment given in the House of Lords).

Devonshire .... Mayor, &amp;c. of South Molton v. Churchwardens of South Molton.

Yorkshire ..... Trustees, Committee, and Officers of Ilkley Hospital v. Churchwardens and Overseers of the Township of Ilkley.

Buckinghamshire	Reg. v. Trustees of the British Orphan Asylum.
Nottinghamshire	Worksop Local Board of Health (Part heard).
Middlesex.....	Governor of the House of Correction, Coldbath-fields.
Surrey .....	Conservators of the River Thames v. Guardians of the Parish of St. Mary, Lambeth.
Suffolk .....	Great Eastern Railway Co. v. Churchwardens and Overseers of Haughley.
Worcestershire..	Reg. v. Guardians of Stourbridge Union.
Middlesex .....	Hossack v. Gray.
.....	Trustees of Homœopathic Hospital v. Governors and Directors of Poor of St. Andrew's, Holborn and St. George the Martyr.
Staffordshire....	Washington v. Scott.
Lincolnshire....	Brook v. Robinson.
Cheshire .....	Reg. v. Heath & ors.
Southampton ...	Stevens and Anderson.
Cheshire.....	Buxton v. Lees.
Lancashire .....	Harter v. Overseers of Salford.
Kent .....	Chatham Board of Health v. Rochester Road and Improvement Commissioners.
Lancashire ....	Guardians of the Poor of Montgomery and Pool v. Guardians of Derby Union.
Middlesex .....	Reg. v. Inhabitants of St. Leonard's, Shoreditch.
Staffordshire....	Dodd and Southan.
Middlesex .....	Guardians of Hastings Union v. Guardians of St. James's, Clerkenwell.
Lancashire .....	Dearden v. Townsend.
Staffordshire....	Wynne v. Ronaldson.
Yorkshire .....	Wakefield Local Board of Health v. Grimsby Railway Co.
.....	Reg. v. Ratepayers of Northouram and Clayton.
Sussex .....	Saunders v. Balby.
Staffordshire....	Reg. v. Inhabitants of Bilston.
Norfolk .....	Spurrell.
Lancashire.....	Inhabitants of Bolton.
Cardiff .....	Cousens v. Stockdale.

### Court of Exchequer.

#### SITTINGS—TRINITY TERM.

<i>Days in Term.</i>	<i>Banc.</i>
Thursday .. May 25	Motions and Peremptory Paper.
Friday .....	Errors, Peremptory Paper, and Motions.
Saturday .....	27 .....
Monday.....	29 .....
Tuesday.....	30 .....
Wednesday.....	31 Special Paper.
Thursday .... June 1	Circuits chosen.
Friday .....	2 .....
Saturday .....	3 Criminal Appeals.
Monday .....	5 Special Paper.
Tuesday.....	6 .....
Wednesday.....	7 Special Paper.
Thursday .....	8 .....
Friday .....	9 .....
Saturday .....	10 .....
Monday.....	12 .....
Tuesday .....	13 .....
Wednesday .....	14 .....
Thursday .....	15 .....

#### NEW TRIALS.

<i>Moved Hilary Term, 1864.</i>	Liverp.—Saunders v. Merryweather
Liverp.—Brabner v. Macann (To stand over till special case settled)	Hargrove v. Albion Marine Insurance Co. (Limited)

*Moved after 4th day of Easter Term, 1865.*

Midd.—Lawrence v. Wade.	Manch.—Brown v. Lancashire and Yorkshire Railway Co.
Carlisle.—Walker v. Wyndham (Heard on 6th and 9th May, 1865, to stand over)	— Woodward v. Metcalfe
Manchester—Collier v. Moss	— Roberts v. Bates
	Midd.—Jullean v. Clarke
	— Ellwood v. Harris
	— Rutley v. Hanne.

#### SPECIAL PAPER.

##### FOR JUDGMENT.

Richards v. Harper (D., heard on the 16th Jan. 1865)	Campbell v. Dufaur (D., part heard Jan. 18, 1865, to stand over till issues in fact tried)
Fletcher v. Rylands (Sp. case, heard May 3, 4, and 5, 1865)	Allsopp v. Guest (D., to stand over till issues in fact tried)

##### FOR ARGUMENT.

Clark v. Magnns (D., to stand over till after issues in fact tried)	Priestly v. Fernie (D.)
Cooke v. Mostyn (D., Nov. 14, part heard, ordered to stand over till issues in fact tried)	Rollings v. Lovel (D.)
Goodyear v. Lindsay (D., 1st May, 1865, part heard, to stand over till after pleas amended)	Scott v. Berry (D.)
	Pritt v. Jones (Sp. case by rule of court)
	Pearson v. Board of Health of Kingston-upon (Appeal over 20 & 21 Vict. c. 43)
	Walker v. Wyndham (D., ordered to be argued with rule for new trial)
	Standbridge v. Barnsley (D.)
	Tebb v. Wilson (Sp. case by order of B. Pigott).

#### PEREMPTORY PAPER.

*To be called on the first Day of Term after the Motions, and to be proceeded with the next Day, if necessary, before the Motions.*

Ford v. Bennett	Moxley v. Lockwood
Sutton v. South-eastern Railway Co.	Morris v. Swansea Vale Railway Co.
Clark v. Hart	

#### BILL IN PROGRESS.

*A Bill to establish Equitable Councils of Conciliation to adjust Differences between Masters and Operatives.*

(LORD ST. LEONARDS).

Recites the 5 Geo. 4, c. 96, intitled "An Act to consolidate and amend the Laws relative to Arbitration of Disputes between Masters and Workmen;" the 1 & 2 Vict. c. 67; and the 8 & 9 Vict. cc. 77 and 128.

Sec. 1. If any number of masters and workmen, in any particular trade or trades, occupation, or employment, being inhabitant householders or part occupiers of any house, warehouse, counting-house, or other property, within any city, borough, town, stewartry, riding, division, barony, liberty, or other place, and who being a master in such trade shall have resided and carried on the same within any such place for six calendar months previous to the signing of such petition, and being a workman shall have resided for a like period within any such place, and shall have worked at his trade or calling for seven years previous to the signing of such petition, shall at a meeting specially convened for that purpose, agree to form a council of conciliation and arbitration, and shall jointly petition her Majesty to grant them a license to form such council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before-recited acts, and in such petition for the same shall set forth the number of the council, and also the names, occupation, and residence of the petitioners, and the manner in which the expenses of the said council and of the registry hereinafter directed are to be provided for, it shall then be lawful for her Majesty, or her Majesty's Principal Secretary of State for the Home Department, to grant such license, provided notice of such petition has been published one month before the application for such license in the London Gazette, and in one or more of the local newspapers of the place whence such petition emanates; provided always, that it shall be lawful for any masters and workmen in any particular trade or trades, occupation, or

employment as aforesaid, within the limits of the application of the Metropolitan Local Management Act, or within any two or more boroughs or districts of the metropolis, to associate themselves for the purposes of this act, and with such license as aforesaid to form councils as aforesaid, as if they resided within any one borough or district.

2. The said council shall consist of not less than two masters and two workmen, nor more than ten masters and ten workmen, and a chairman; the number to constitute the said council to be inserted in the license; but no member of the council shall adjudicate in any case in which he or any relation of his is plaintiff or defendant.

3. For the purposes of this act, the persons whose names, occupations, and abodes are attached to the petition praying for a license shall and they are hereby authorised to proceed to the appointment of a council of conciliation and arbitration from among themselves, within thirty days after such grant of license; and the said council shall remain in office until the appointment of a new council in its stead.

4. The council shall have power to appoint their own chairman, clerk, or such other officer or officers as they may deem requisite, and shall have power to hear and determine all questions of dispute and difference between masters and workmen, as set forth in stat. 5 Geo. 4, c. 96, which may be submitted to them by both parties, and shall have, hold, and exercise all the powers and authority granted to arbitrators and referees by and under the various enactments and provisions of the acts before recited; and any award the said equitable councils of conciliation and arbitration may make in any case of dispute or difference submitted to them under the before-recited act or acts, or under this act, shall be final and conclusive between the parties to such arbitration, without being subject to review and challenge by any court or authority whatsoever; and the said council are hereby further authorised to adjudicate upon and determine any other case of dispute or difference submitted to them by the mutual consent of master and workman, or masters and workmen, and the same proceedings of distress, sale, and imprisonment as are provided by the said recited acts, or any of them, shall be had towards enforcing every such award (by application to any justice of the peace of the county, stewardry, riding, division, barony, city, town, burgh, or place within which the parties shall reside), as are by the said recited acts, or any of them, prescribed for enforcing awards made under or by virtue of the provisions of them, or any of them; but nothing in this act contained shall authorise the said council to establish a rate of wages, or price of labour or workmanship, at which the workman shall in future be paid.

5. That a quorum of not less than three (one being a master and another a workman, and the third the chairman) may constitute a council for the hearing and adjudication of cases of dispute, and may accordingly make their award; but a committee of council, to be denominated the committee of conciliation, shall be appointed by the council, consisting of one master and one workman, who shall sit at such times as shall be appointed, and be renewed from time to time as occasion shall require; and all cases or questions of dispute which shall be submitted to the council by both parties shall in the first instance be referred to the said committee of conciliation, who shall endeavour to reconcile the parties in difference; when such reconciliation shall not be effected, the matter in dispute shall be remitted to the council to be disposed of as a contested matter in the regular course.

6. The chairman of the council, who shall be some person unconnected with trade, shall preside at their meetings, and shall be appointed at their first meeting after obtaining such license as aforesaid; when the votes of the council shall be equal, the chairman for the time being is to have the casting vote.

7. No counsel, solicitors, or attorneys to be allowed to attend on any hearing before the council or the committee of Conciliation.

8. Council to be elected for one year. Case of vacancy, &c.

9. Qualification of voters for council.

10. Register of voters.

11. Meetings of masters and workmen to elect the council.

12. Voting papers.

13. Election.

14. Appointment of clerk.

15. Place of meeting.

16. To make list of fees, by-laws, &c.

17. Recited acts to remain in force. Act not to extend to domestic servants or servants in husbandry.

18. Short title.

19. Commencement of act.

## Imperial Parliament.

### HOUSE OF LORDS.—Thursday, May 11.

The Earl of *Belmore* presented a bill to provide for the registration of railway debentures and debenture stock, which was read a first time.

#### RECORD OF TITLE (IRELAND) BILL.

On the motion of the *Lord Chancellor*, the House went into committee on this bill, and the various clauses were agreed to, with amendments.

#### THE COUNTY COURTS EQUITABLE JURISDICTION BILL.

On the motion that this bill be read a third time, *Lord St. Leonards* referred to the County Courts Bill of last session, which, he said, among other provisions, proposed to give an equitable jurisdiction to county courts, but which, after much discussion, the noble and learned Lord on the woolsack thought right not to proceed with. If that bill had not been abandoned, some settlement might have been come to, in reference to the provisions in it relating to the credit given to wives and daughters by packmen, and to the frequent commitments and recommitments for the same trifling debt. The original object of the establishment of county courts was to provide an easy mode of recovering small debts and demands; but since their first establishment bankruptcy business had been added to the labours and duties of the judges. At the present moment, so far as legal power was concerned, they were prohibited from entertaining any question with respect to title, or the construction of settlements and wills. The bill now before their Lordships proposed to give them equitable jurisdiction up to a certain value; but he ventured to say, that in many cases where the amount involved was not considerable, questions were raised as important in point of law as could possibly occur in any suits brought before their Lordships' House. The ground on which the noble and learned Lord on the woolsack introduced the bill was, that the costs in courts of equity in cases of small amount swallowed up the property in dispute; but it was not so much the strict costs of the suit which occasioned the great expense, but the costs resulting from the discussion of extraneous questions, which ought never to have been entered upon. The county court judges were a learned body of men, but it was no impeachment of their ability to say, that they were not competent to discharge the new functions which the bill would throw upon them. They had never practised in equity, and they would be naturally unable to exercise this equitable jurisdiction with benefit to the suitors. All sorts of powers were given to the judges, and from their decisions an appeal was to be allowed to the Court of Chancery. Thus, the unhappy suitor would be compelled to begin again in the court from which he had been ousted, and, for the purposes of appeal, would have to incur all the expenses of the old procedure. But his great objection to the bill was the enormous encouragement it would give to litigation. You ought not to go round the country with perambulating courts of equity, urging people to litigate, promising them facilities for so doing, and inducing them to resort to equity for all sorts of disputes, which otherwise, in all probability, would be amicably settled. People were generally quite ready enough to go to law at present; and this bill would give them the means of enforcing every fancied right in cases, nine out of ten of which would, but for the bill, be settled without resorting to the law at all.

The *Lord Chancellor* regretted that his noble and learned friend had not given credit to their Lordships for recollecting what he had said upon two former occasions. What they had the pleasure of hearing from him now they had heard at some length, both on the second reading and also in the committee of the bill. He regretted that his noble and learned friend had thought proper to call in question the competence and knowledge of the judges of the county courts. He could assure his noble and learned friend that he had been quite misinformed upon that point. He could pledge himself to

their Lordships that the county court judges were a body of men who would bring to the administration of justice under the bill a large amount of knowledge, as well as great industry and care, in the execution of their new jurisdiction. That the new jurisdiction was required was pretty generally admitted, and he should be most happy, provided the bill passed, if this session were to be productive of no other amendment of the law. Under the law as it now stood there was an absolute denial of justice to the poorer classes, because the Legislature had made no adequate provision for their case. He hoped their Lordships would unanimously pass the bill.

The bill was then read a third time, and passed.

Friday, May 12.

THE REV. MR. WAGNER.

The Marquis of *Westmeath* inquired if the public reports of proceedings in the magistrates' court at Trowbridge, held on Thursday, the 4th May, were authentic. The reports stated that the Rev. A. D. Wagner, described as perpetual curate of St. Paul's, Brighton, was a witness before that court when a prisoner was under examination on a charge of murder, and that to a question made by the court, with six magistrates present, the said A. D. Wagner declined answering a question pertinent to the case, alleging that what he knew was under the seal of confession. He asked whether the magistrates should not have thereupon committed him. The noble marquis quoted several authorities, in order to shew that the law of England did not confer upon a clergyman the privilege of refusing to divulge secrets which had been confided to him in the confessional. More than one case had in fact occurred, in which Roman Catholic priests had been committed to prison for refusing to answer questions as to the confessions of prisoners; and on the last occasion when that occurred, the late Sir George Lewis and the then Attorney-General had declared, in the most explicit terms, in answer to Sir G. Bowyer, that the Roman Catholic clergymen had no privilege to refuse to answer questions relating to matters confided to them in confession.

The Lord Chancellor could not reply to the first question, because he had not much time to read the newspapers\*. As to the last question, he must congratulate the noble marquis on the industry with which he had obtained a clear understanding of the law on this point. The materials he had at his command really rendered it a matter of supererogation for the noble marquis to put a question to the Lord Chancellor. He had stated the law as clearly as the Lord Chancellor could have done, and with a much greater profusion of authorities than the Lord Chancellor had at his command. There could be no doubt that no clergyman was privileged to refuse to answer a question put to him as a witness in the course of a criminal trial, on the ground that such answer would reveal something that he had learnt by confession. He might be compelled to answer. The law of England did not even allow this privilege to a Roman Catholic clergyman in dealing with a member of his own profession. No doubt, therefore, Mr. Wagner was under an obligation to answer the question if it had been insisted upon. But it was a matter of discretion whether this should be done. In this case the magistrates had enough evidence without Mr. Wagner answering the question, and therefore they did not press it, or visit him with those consequences with which he might have been visited. The prisoner was committed for trial, and therefore he did not think that it was at present necessary to take any further notice of the case.

Lord Chelmsford said, that as Mr. Wagner had attended reluctantly before the magistrates, they had no power to commit him for refusing to answer. That power was only given, under the Criminal Justice Act, in case a witness was brought before a magistrate on a summons or by warrant.

The Lord Chancellor remarked, that if the reports in the newspapers were correct, Mr. Wagner said that he had received a subpoena, and appeared under compulsion.

After a few words from Lord Harrowby, the subject dropped.

The Record of Title (Ireland) Bill, the Sheep and Cattle Bill, and the Union Officers (Ireland) Superannuation Bill, were read a third time, and passed.

\* But see his Lordship's remark, *infra*.

Tuesday, May 16.

The Marriages (Lambourne) Bill was read a third time, and passed.

The Commons' Amendment to Lords' Amendments in the Private Bill Costs Bill was considered and agreed to.

OXFORD UNIVERSITY (VINERIAN FOUNDATION) BILL.

The Earl of *Derby*, in moving the second reading of this bill, said its object was to enable the University of Oxford to pass a statute amending a statute which had been already passed in pursuance of the will of Charles Viner. The Vinerian foundation arose from the will of Charles Viner, who died in 1755, and bequeathed the whole of his very valuable library and a bequest worth 12,000*l.* to the University, and if all who had been at the University had been actuated by the same conscientious motives, that seat of learning would have been enriched, indeed; for Mr. Viner stated that his grant was given to the Chancellor, Masters, and Scholars of the University, "in order to make some amends for my indiscretion there in infancy." He then proceeded to specify his objects, one of which was for nominating, appointing, and establishing a professorship of Common Law at the University, and putting it upon a proper footing, in order that young gentlemen who might be students there might be instructed and enabled to pursue their studies when attending the courts at Westminster, and might not trifle away their time by hearing what they understood nothing of, and thereby divert their minds from the study of the law to their own prejudice. For the purpose of effecting this very laudable object, it was proposed that, out of a portion of the residue of the funds, provision should be made for publishing a supplement of his own Abridgement of the Law, and also appointing, as far as the funds would allow, one or more fellowships and scholarships. The Abridgement to which he referred consisted of twenty-four large volumes, and the supplement had been published, he believed, in the small compass of six additional volumes. The University, desiring to act entirely in concert with the intentions of the original founder, wished to make some modifications in the statute in question, so as to enable them to have a resident Professor. But upon proposing to make those alterations they were informed by the present Attorney-General that it was doubtful whether they could modify it at all, because the statute formerly passed was in conformity with the precise terms of the will of the founder. It was to enable them to make the necessary alterations that this bill was introduced. The proposed modification had been sanctioned by the Hebdomadal Council, and had been unanimously approved by the Council of Convocation. The bill had been introduced into the other House by the Chancellor of the Exchequer, the member for the University, and the Attorney-General, its counsel, and had passed without opposition. He trusted it would be received equally without objection by their Lordships. He begged to move the second reading of the bill.

The bill was read a second time.

The report of an amendment in the Married Women's Property (Ireland) Bill was received.

HOUSE OF COMMONS.—Friday, May 12.

CROWN SUITS, &c.

The Attorney-General obtained leave to introduce a bill to amend the procedure and practice in Crown suits in the Court of Exchequer, and for other purposes.

The bill was brought in and read a first time.

Tuesday, May 16.

THE PATENT LAWS.

In answer to Mr. Cox,

The Attorney-General said, this bill had been in course of preparation with the full expectation of its being introduced this session, but further consideration had rather added to the difficulties attendant on the subject, and it would be hopeless to think of passing such a bill this session.

THE BANKRUPTCY LAWS.

Mr. *Maffatt* rose to call attention to the report of the select committee on the Bankruptcy Act of 1861, and the existing state of the laws in regard to debtor and creditor; and to move, "That, in the opinion of this House, the report of the select committee on the Bankruptcy Act of 1861,

deserves the prompt and serious consideration of her Majesty's Government." The hon. gentleman reviewed the changes which had taken place in reference to the law of bankruptcy during the last forty years, and remarked, that the Consolidation Act of 1849, instead of improving the then existing system, had rather tended to make matters worse. The bankruptcy laws were at the present time in a highly unsatisfactory state; and the act of 1861 had produced results which no man connected with the commerce of the country could possibly have anticipated. In the first place, it had merged the trading with the non-trading community, and had led the whole mercantile world to avoid the Bankruptcy Court as much as possible, in consequence of the expense and delay in the course of procedure. There was collected out of bankruptcy in the last year 677,000*l.*, and the cost of collection and official charges was 140,000*l.*, leaving but 530,000*l.* for the creditors from the whole of the bankruptcies of the United Kingdom. If he compared that with the year 1843, when the commerce of the country bore no comparison to the present, the amount of the bankruptcies was 1,067,000*l.* That was not surprising, if they analysed the account of last year, for of 7324 bankruptcies, 6800 were made on the bankrupts' own petition, without leave of the creditors, and 595 at the instance of the creditors. Out of 6600, only 5324 paid any dividend, and out of the whole 7324 only 80 were refused prompt discharge. Practically now, in the case of every estate where there was a prospect of a dividend, any kind of compromise or assignment was agreed to rather than go to the Court of Bankruptcy; and the natural sequence of it was, that every debtor knew he had an instrument at hand by which he could cheat his creditors. This was done in two ways, as inaugurated in the act of 1861, by composition or assignment. The practice of allowing debtors to evade their creditors was telling upon the mercantile position of the country, as was shewn by the fact, that whereas in 1843 there were 640 compositions only, there were, in 1864, 1348; and in the last three months of that year there were no less than 302 for less than 5*s.* in the pound, some being as low as 6*d.* and 3*d.* The great mass of insolvencies might be said to be settled under assignment. Scarcely a week passed in which some two or three firms extensively engaged in business did not suspend payment, placing their affairs in the hands of their solicitors or friendly accountants, who said to the creditors, "We will look into the books and tell you what you can get;" and in this way the creditors were kept at bay. The friendly accountants, although some of them were of the highest respectability, took the books as they found them, and the consequence was, that any malversation or abstraction from the assets might pass undisturbed. A composition was announced, which the creditors ordinarily were content to take, but there was generally a serious difference between the money result and the statement first made, and he had known several instances of estates which upon the first shewing promised to pay 20*s.* in the pound, the debts of which might now be bought for 2*s.* or 3*s.* in the pound. In November of last year the debts put into composition were 3,938,000*l.*, and in December 4,049,000*l.*, or at the rate of 48,000*l.* a year: and this was shewn not to be the result of a period of extreme pressure but a normal state of things; for the number of deeds registered in those two months was 900, with a stamp duty of 6000*l.*, while the number for the six months ending the 11th April was 2800, with a stamp duty of 15,614*l.*; and the stamp duty was only a partial test, as it only extended to 80,000*l.* What, then, was the remedy? Scarcely anything had been suggested except the introduction of the Scotch practice. All the attacks upon Lord Brougham's bill were upon the question of patronage, but nothing was said with respect to the benefit of the estate, and the same thing occurred in the case of the evidence taken before the committee last session. The present system was essentially and fundamentally wrong. The real principle was to let the creditors manage their own affairs with the debtors, and for the State to interfere as little as possible. If the debtor were guilty of fraud, let him be tried by the ordinary tribunals of the country; but the creditor should not have the power of punishing the debtor in any way. The committee proposed to abolish imprisonment for debt, to take away from the creditor the power of entering the body of his debtor. It was also proposed that the creditors should have the freest access to the property of the debtor, which from the time of the insolvency should be

vested in their own management. They proposed to abolish the present system of bankruptcy, and in lieu thereof that creditors should have the power of choosing their own officers, and managing their own affairs themselves. But there was this difficulty, that it was practically impossible to get individual creditors to look after their own affairs and those of other creditors. It was proposed to abolish altogether, as soon as practicable, the whole system of bankruptcy as it now existed, than which it was not possible to devise a worse system. The change suggested had the most careful consideration of the committee, and they were encouraged in the bold course they had taken by communication which had been made to them by the Lord Chancellor, the plan in whose bill, in fact, they had almost entirely adopted. The committee, however, did not concur with the noble and learned Lord with respect to making the discharge of the debtor depend entirely upon the acquiescence of the creditor. If the recommendations of the committee are now laid on the table, and which were the result of great care, deliberation, and thought, were passed into law, he believed they would produce the greatest possible benefit to the commerce of the country.

Mr. Ayrton seconded the motion, and said, he thought it had been sufficiently shewn that the present bankruptcy law had entirely failed; but if that was the only result at which Parliament had arrived after devoting itself for nearly 300 years to the subject, he could not help, as a member of the committee, feeling some distrust in the decision at which they had arrived; and so great was his own diffidence, that he would have abandoned the question, only that he believed there was underlying the whole system of legislation some great radical errors, which it was the object of the resolutions of the committee to remove. One evil of the present system was the relying on the imprisonment of the debtor at the instance of the creditor as the best means of getting satisfaction for the debt. It was not a little remarkable, that in this country, which set so great a value on liberty, there was so little respect for the liberty of debtors. Perhaps this neglect about the personal liberty of the debtor was a relic of an age of violence. Unfortunately, the law as it now existed only took cognisance of that description of property which could be disposed of by the officer of the court, and hence full satisfaction for the judgment could not be obtained. Imprisonment for debt seemed to defeat the very object of the creditor, for if the debtor was possessed of no property, nothing was gained by putting him in prison. By imprisoning a debtor having any trade or profession, he was thereby deprived of the means of paying off any claims upon him. There was another evil connected with the system, namely, that of losing sight of the line of demarcation between civil and criminal proceedings—proceedings to obtain satisfaction for a debt, and those resorted to for the purpose of punishment. The committee came to the conclusion, that it was absolutely necessary to sweep away those underlying fallacies, and insist upon the total abolition of imprisonment for debt. When, however, a debtor sought to abscond, it was necessary to take precautionary measures, and the committee therefore resolved that the power of detaining an absconding debtor should be retained. The committee next resolved, that the power of issuing a summons requiring a debtor to appear which had been restricted to debts above 50*l.*, should be extended to all descriptions of claims which could be preferred. So that if the view of the committee were adopted, and imprisonment ceased, there would be the amplest opportunity given to the creditor to enforce his claim to the full extent of the property of the debtor. This would reduce bankruptcy in practice to the simple condition of a man being unable to meet the demands of his creditors, retaining only that portion of the previous law which declared that acts in anticipation of insolvency should itself constitute bankruptcy. It would then no longer be necessary to have courts of justice established all over the country for the mere purpose of making a man bankrupt. The process would be reduced to a simple act of record or authentication of the status of the bankrupt by an officer. That function, the committee thought, could be performed by the county courts all over the country, and to meet the special case of the metropolis by the foundation of a new court. A consideration of the position of secured creditors, and of the fact that they exercised an influence over the bankrupt's estate, which generally led to the appointment of assignees favourable to their claims, induced the committee to resolve, that after the ad-



judication of bankruptcy, the bankrupt should be left exactly as he was before, without any change being made in the custody of his property, he being responsible to his creditors for its safe custody; and that only the unsecured creditors should be allowed to direct the administration of the estate.

Here the House was counted out.

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# The Jurist

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## THE JURIST.

LONDON, MAY 27, 1865.

THE powers of district boards in carrying out the provisions of the Metropolis Local Management Acts, 1855 and 1863, and dealing with the sewage of their districts, have recently been very much considered in the case of *Cator v. The Board of Works for the Lewisham District*, in the Queen's Bench and the Exchequer Chamber (11 Jur., N. S., part 1, p. 340). The drainage of the district of Lewisham had for many years been carried into a stream called the County Bridge stream at a point within the Lewisham district, the County Bridge stream flowing thence onwards until it fell into the Poole river, a natural stream of considerable width and depth, both streams passing through land belonging to the plaintiff beyond the limits of the Lewisham district. Part of the Lewisham district being greatly in want of additional drainage, the board of health for the district executed certain drainage works, and availed themselves as they had done before of the County Bridge stream to carry off the sewage matter.

The effect of the additional drainage was to cause a great quantity of offensive matter to pass down into the County Bridge stream and Poole river, and the water, which was before affected by the drainage only in an inappreciable degree, became polluted to such an extent as to cause substantial injury to the plaintiff. The special case stating, that the effect of the increased discharge from the sewers into the County Bridge stream and the Poole river was to render them foul, stinking, and wholly unfit for cattle or ordinary domestic purposes.

It did not appear to be disputed that the plaintiff was entitled to compensation for the injury he had sustained; but the question was, whether his remedy was by action at law for damages, or by proceeding to obtain compensation under the 86th section of the 18 & 19 Vict. c. 120; and incidentally to this question, the powers of district boards as to entry on land, and the conduct and deposit of sewage matter, were discussed and considered. It should be premised, that by sect. 86 every vestry and district board is directed to cause offensive ponds, pools, ditches, drains, &c. to be cleansed or covered, or to construct proper sewers for the discharge of sewage matter, or to do such other works as the case may require; that is to say, such as may be necessary for the abatement of the nuisance caused by such ponds and ditches, if the owner or occupier of the premises where the nuisance exists fails to do so after notice given as specified in the act; and it seems to have been admitted by both sides that the drainage works executed by the Lewisham board in this case were such as were fully authorised by the act, but for the pollution of the streams by the pouring of the sewage matter into them, and injurious consequences resulting therefrom. The 86th section also contains a proviso, that where work done by any vestry or district board in pursuance of the

act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, and also gives the vestry or district board the right to contract for the purchase of such mill or any such right connected therewith, or other right to the use of water in the manner provided by the act. The Court of Queen's Bench seems to have considered, that as the drainage works were within the district, and such as in themselves were authorised by the statute, the outfall into the river also, quoad any damage within the district, was also clearly authorised; and that, therefore, as to such damage, the only remedy was under the compensation clause, and not by action; and that, therefore, the only difficulty the Court had to deal with, was how the damage was to be treated, which arose, as in this case, beyond the Lewisham district; the question being, was this also matter for compensation, under the 86th section, or was it ground for an action at law?

Mr. Justice Blackburn, in delivering the judgment of the Court, which was not come to without doubt and hesitation, said that they thought it could not be disputed, that had the damage to the plaintiff occurred within the district, the only redress to which he would have been entitled would have been by proceeding for compensation, under the 86th section of the 18 & 19 Vict. c. 120; for that it was plain that that section contemplated, and provided for the possibility of, damage being done to water rights by the execution of sewerage works, and would comprehend a case in which a stream was polluted by offensive matter being discharged into it; and after remarking, with reference to the 58th section of the 25 & 26 Vict. c. 102, which had been argued from, as shewing that an express statutory enactment was necessary to give a district board any power beyond the district, that that section related to works to be executed beyond the limits of the district, not to damages arising without the district for works executed within it, he proceeded to state that the Court gave judgment for the defendant, that an action would not lie; and the principal grounds on which the Court went may be shortly stated to be, that damages beyond the district, by reason of works executed within the district, was matter for compensation, within the meaning of the 86th section of the 18 & 19 Vict. c. 120; and that to hold the contrary would be to cripple the powers of district boards, who could not then avail themselves, for the purpose of drainage, of streams flowing beyond the local limits, because, if any damage should occur to the proprietors or occupiers further down the stream from its pollution, they might, if it were actionable, be compelled, by repeated actions, to entirely undo the works which had caused such damage; and that the Court did not think that the Legislature intended to place such a restraint on the powers of the local authority.

The Court thus entering on a question of general policy, and evidently desirous of taking a liberal view of the powers conferred by these acts, seems to have overlooked the fact that the great and manifest object

of these sanitary institutions, as devised by the Legislature, is to remove nuisances, and as far as possible to extend the domains of cleanliness and purity, but not by any means to create new nuisances, and that it is quite incompatible with the avowed functions of a district board that they should have power to turn a pure river into a filthy cesspool, and simply transfer in another form to another district those evils which may exist in their own. Here the sewage matter became a nuisance, both in and out of the district, by its discharge into the County Bridge stream, and its necessary course onwards, into the Poole river. The powers of these district boards will not be by any means paralysed by a rule of law that forbids them to create a nuisance in adjoining districts, by means of filth. If there is no natural outlet of such a character, and so situated that the sewage matter may be innocuously discharged by means of it, they may adopt some artificial method of disposing of the sewage matter, or they may transfer the drainage to the general board, who have more extended powers of cutting artificial drains to carry the sewage to a distant outlet, and it seems most reasonable to hold that they must not, in their attention to the sanitary wants of their own district, by any means inflict a new nuisance on another.

The judgment of the Court of Queen's Bench was reversed by the Court of Exchequer Chamber, but not unanimously, as two of the learned judges were of opinion that the judgment of the Court of Queen's Bench ought to be affirmed. We must refer to the judgments delivered *seriatim* for a full account of the views of the learned judges on the different points raised in the case. First, the Chief Baron and Mr. Baron Pigott adopted the views of the Court of Queen's Bench, and the Chief Baron adverted to the circumstance that the drainage of the district had actually flowed into these streams, though not so as to create any nuisance, prior to the discharge of the increased sewage, and that what the defendants had done was only so to construct the drains as to enable them to carry off, not merely that which theretofore was carried off, but which ought to be carried off in order that the defendants might obey the act, and render the district healthy. Baron Bramwell, on the other hand, went very closely into different sections of the statute, and pointed out that the board, by the terms of the act, had no right to purchase land by compulsion, but could only do so by agreement; and that it would be singular if, though they could not take a man's land, they could yet foul and spoil it, and, as the right was claimed on the ground of convenience, he did not see why, if such a right existed, they might not turn the sewage into any pond in his field, or into any of his fields that might lie low, there to find its way out in the way it might happen to do. Still he admitted it might be that there was such a power by implication, but he observed that it did not appear that they could not do the drainage in any other way; that they might go to the Metropolitan Board if they could not otherwise do it; and that if they could not do it at all, and no one could do it, then, as the Legislature did not order an impossibility to be done, they must

do it as far as they could; and that, in his opinion, the section which directed the act to be done did not by implication give a power either of taking land, or spoiling land, or a pond, or a stream, in the way in which it had been done in that case. He also referred to the terms of the 69th section, where powers are given to carry such sewers or works *through, across, or under* turnpike roads, &c., or *through or under* "any cellar or vault which may be under the pavement or carriage way of any street, and *into, through, or under* any lands whatsoever;" and observed, that the expressions "*into, through, or under*" manifestly did not mean to take it into, and there to leave it; and that it therefore must be read "*into, through, or under*;" that is to say, you may take it in, and you must take it out either by "*through or under*." The proviso under the 86th section, as to where any right to water is affected, he read as meaning, that where any work is done, or is required to be done, by any vestry or local board, in pursuance of the provisions of the act, which affects such right, they shall give compensation, but as not meaning that they may do something which otherwise, but for the proviso, they could not do. On the question of necessity, Mr. Justice Byles observed, that absolute physical necessity there could not be; the sewage might be removed in carts or suitable vehicles, however expensive that might be; nor did necessity in the lowest sense of the term exist—that is, of doing the thing, or an alternative so expensive as to be commercially impossible; for by sect. 89, the district board had the option of turning over the drainage to the general board, who had power to cut an artificial drain, which might effectually dispose of the sewage in the common stream. The proviso in sect. 86, he thought, might well apply to an interference with a temporary use of water; but he was of opinion that water rights could not be absolutely taken by compulsion, any more than land, but were made the subject of voluntary purchase only.

We refer, in conclusion, to the elaborate judgment of Chief Justice Erle, who concurred in the reversal of the judgment of the Court of Queen's Bench, and in the course of his judgment referred to sects. 150, 151, and 170, shewing it to be clear, from these provisions, that the district board cannot take land, or any right or easement over it.

The following, then, are the conclusions which may be drawn for the practical information of vestry and district boards, under the Metropolis Local Management Acts, from the dicta and judgments in the above case.

They cannot take land by compulsion, neither can they take by compulsion, any right or easement over land.

Those are subjects only of voluntary sale and purchase; and, as they cannot take the land of any individual, they cannot foul or spoil it, or the water on it, or, without consent, make it the place of outfall or deposit for the sewage. The right to carry the drains *into, through, or under* any land whatsoever, is given to them for the purpose of the transport and conveyance of the sewage, and they must so manage it as not by their acts to create a nuisance, either in their own

district, or in any other. If there be no natural outlet of such a situation and character, that the sewage may be innocuously discharged there, they must construct an artificial place of deposit, and, if they find the undertaking too great, and the burthen too heavy for them, they may, under the provisions of sect. 18 & 19 Vict. c. 120, turn over the drainage to the Metropolitan Board of Works.

### Correspondence.

#### TO THE EDITOR OF "THE JURIST."

SIR,—Fallacies and misrepresentations in important public documents ought not to be allowed to pass unnoticed; I therefore crave space for the following examination of that part of the Special Report of the New York Commissioners for the Codification of the Law (lately printed by you, ante, p. 160), which professes to state the case of the codists against the anti-codists. I will quote and comment on the Report sentence by sentence, without further preface.

*"The question, whether a code is desirable, is simply a question between written and unwritten law."*

That is not the question at all. The question is, whether, our law being now in a non-statutory form, it is desirable to abolish it, and enact statutory law in its place.

*"That this was ever debatable is one of the most remarkable facts in the history of jurisprudence. If the law is a thing to be obeyed, it is a thing to be known; and if it is to be known, there can be no better, not to say no other, method of making it known than of writing and publishing it."*

The words "written" and "unwritten" are less clumsy ones than "statutory" and "non-statutory;" but they are unfortunately ambiguous, and this ambiguity is the foundation of nearly the whole of the commissioners' arguments. They make out that the law ought to be "written," and then they silently assume that no law can be "written" law, unless it is in the form of a code. Nobody denies that it is desirable that what is to be known should be written and published; but our Reports and Text-books are written and published. What the opponents of codification contend is, that by the method of deduction from precedents and the other sources of non-statutory law, the law applicable to any given case as it arises can practically be ascertained with more certainty, and that the law so ascertained will be better than by the method of giving the judges nothing but an abstract proposition as their guide. This view may or may not be correct; but it is unworthy of the commissioners to bolster up their cause by a mere verbal quibble on the words "written" and "unwritten." Another confusion of ideas which pervades the commissioners' remarks may be noticed here. They do not seem to feel the difference between the two questions—how is a legislator to enact a *new* law? and how should a legislator deal with an existing body of law (or materials for the development of law as wanted), such as we now possess? If you want to make a *new* law you *must* enact it in the form of a general proposition; but there is (to say the least) no *necessity* for enacting a general proposition, in order to have the benefit of the existing state of things.

*"If a written constitution is desirable, so are written laws. The same reasons which affect the one affect also the other."*

On this side of the Atlantic it will probably be suffi-

cient to let this remark pass, merely adding the corollary, that if a written (codified) constitution is not desirable, neither are written (codified) laws.

*"There may be countries where the conflicts between the different orders in a State render a written definition of their relative rights a difficult or an impossible task; and there, of course, a written constitution is not likely to be attempted; and because a written constitution is not thought desirable, written laws are supposed to be undesirable. These reasons have no application to this country. We have no orders in the State, no classes of society clashing with each other."*

For "written" read "codified" throughout. A little blindness is allowed to patriots lauding their country; and a little more to doctrinaires lauding their *p t* scheme; but is it not astonishing that, even under the combined influence of both causes of obfuscation, the commissioners should have been able to persuade themselves, that in the State of New York there are no "orders" and no "classes of society clashing with each other!" There must be such in every conceivable community of men.

*"The will of the people is the supreme law; that will is fully expressed by their written constitution and their written laws. It should seem, indeed, to have no other fit expression."*

As to the will of the people being the supreme law, I confess myself unable to attach any definite meaning to the statement, in connexion with the questions under consideration. Do the learned commissioners mean, that if Smith has a dispute with Jones about the boundary of a field, he is obliged to ask the people what is its will before he can get his rights ascertained? If so, that supreme law is certainly not codified. But if they only mean to remind us that, for the purposes of legislation, supreme legislative power must be deemed to reside somewhere, why should codified laws be a *more* fit expression of the supreme will of the "people" than of the supreme will of a Parliament, or of an Emperor? This is very bewildering.

*"There are those who argue, that an unwritten law is more favourable to liberty than a written one."*

I am not aware that anybody ever argued thus. It certainly has been argued (and in my opinion successfully, but that is beside the question), that the law is likely to be better and more easily ascertained in practice when uncoded than when codified. (I speak of "uncodified law" for convenience; my meaning will be understood).

*"The contrary should seem to be more consonant with reason. It can scarcely be thought favourable to the liberty of the citizen, that he should be governed by laws of which he is ignorant!"*

Who ever said or thought that it could be? But the opponents of codification contend that the citizen can ascertain and apply the law at least as well from uncoded sources, as from a code.

*"And it can as little be thought, that his knowledge of the laws is promoted by their being kept from print, or from authentic statement in a written form."*

To talk of the laws being "kept from print" is mere trifling. The commissioners hardly mean to allege that nothing but a code is capable of being printed? By "authentic statement in a written form," they mean, of course, "reduction to abstract propositions and enactment in a code," in a word, codification; consequently, the argument in this sentence amounts to this—that the law ought to be codified, *because* it can hardly be thought that the citizen's knowledge of it is promoted by its being kept uncoded; which is only a roundabout way of saying, because it ought to be codified.

*"Whatever is known to the judge or to the lawyer can*

be written, and whatever has been written in the treatises of lawyers, or the opinions of judges, can be written in a systematic code."

Here is a new juggle on the word "written." Of course what has been written once can be written again, that is, copied; but, in order to make this sentence an argument in favour of codification, "written" must mean "reduced to abstract propositions in such a way as to be more practically available for ascertaining the law in future cases than the treatises and opinions of lawyers and judges are in their present form;" the feasibility of which mode of "writing" is at any rate not self-evident.

"It is no answer, to say that nothing can be written which will not be susceptible of different interpretations. That may be true.

"But it is no more susceptible of different interpretations when written in a code than when written in the reports."

What the commissioners refer to by "it" is not very clear; but the sentence is intelligible enough to convict the commissioners of an inability to see the essential difference between an abstract rule and a precedent, which, considering how they have been employed all these years, is really surprising. When they speak of abstract rules being susceptible of different interpretations they refer (I suppose) to the difficulty of applying such rules to particular cases as they arise; but a report of a case lays down no rule; it is an historical record; the facts were so and so, the judgment was so and so. As far as it goes, it is firm ground on which to found an inference, and as little susceptible of different interpretations as anything well can be. Different inferences may, no doubt, be drawn from it in the process of evolving the law on a new case; and you may say that it is susceptible to different interpretations in this sense, if you like; but, at any rate, this susceptibility in precedents is so radically different from the susceptibility of general rules, that no comparison between them is possible.

"On the contrary, when expressed with care, for the very purpose of stating a rule which is to govern all cases alike, there is more likelihood of precision in language than when expressed with reference to a particular case."

After so much confusion of ideas, it is not surprising that the commissioners should begin to get a little hazy in their grammar also. I have real difficulty in attaching a definite meaning to this paragraph, but I suppose something of this kind is intended—that a writer expressing himself with care, for the very purpose of stating a rule which is to govern all cases alike, is more likely to use precise language than if he were only deciding a particular case. If this is the intended meaning, it is only another instance of an attempt to compare things of different natures. The codifier's business is to lay down a general rule; the judge's, to decide a particular case; and whether the commissioners have or have not any warrant for suggesting that a codifier is more likely to be careful and precise in discharging his task than a judge in discharging his, the whole paragraph is entirely beside the real question at issue. I may add, that in contrasting the merits of two processes, it cannot be fair to assume that the favoured one will be performed with more care than the other.

I here leave the commissioners. You will please to observe that my only object has been to expose the fallacy of the arguments used by them. I do not say that there are not better arguments in favour of codification, nor have I attempted to state the arguments against it.

B. R.

Lincoln's-inn, May, 1865.

## Rebulet.

*The Law and Practice of the Court of Probate, Contentious and Common Form, with the Rules, Statutes, and Forms.* By PHILIP WILLIAM DODD, Solicitor, and GEORGE HENRY BROOKE, Proctor in Doctors' Commons. 8vo., pp. 1310.

[Stevens, Sons, & Haynes.]

THIS work is put forth as the result of six years' labour, and we can readily believe that the task of preparing it has been sufficient to occupy nearly all the leisure of two professional lives during that period. It is a bulky volume, but the bulk represents value, and includes a nearly exhaustive treatise on the subject indicated by the title of the book. The following is a brief epitome of the table of contents:—

Part I.—Introduction. 1. Sketch of the practice of the Prerogative Court, on which that of the Court of Probate is founded. 2. Jurisdiction and constitution of the Court of Probate, and status of the practitioners therein.

Part II.—Factum of a will. 1. Local law. 2. Capacity. 3. Characteristic of testamentary instruments; joint mutual, &c. wills. 4. Execution of wills under the former and the existing laws. 5. Wills of soldiers and seamen. 6. Wills under powers. 7. Contingent wills. 8. Alterations in wills. 9. Revocation. 10. Revival and republication.

Part III.—Common form business. 1. Executors, who may be; renunciation of, and succession to, the office. 2. Probate, and its effect; practice. 3. Administration, who may be appointed; qualified administrators; practice; origin of the ecclesiastical jurisdiction; distribution; escheated personalty. 4. Confirmations; Irish grants and English grants to operate in Ireland and Scotland; note on confirmation and executorship, and distribution in Scotland [a very carefully prepared and useful note.] 5. Amendment of grants. 6. Surrender and revocation of grants. 7. Declaration and inventory. 8. Commission of appraisal. 9. Probate duties. 10. Deposit of wills.

Part IV.—Contentious business. 1. Parties in regard to interest. 2. Interveners. 3. Proxies. 4. Paupers. 5. Proof in solemn form. 6. Causes of interest. 7. Suit for investing and account. 8. Proceedings on administration bond. 9. Caveat. 10. Citation. 11. Appearance. 12. Affidavits as to script. 13. Proceedings by plea and proof. 14. By default. 15. Issues. 16. New trials. 17. Demurrer. 18. Act on petition. 19. Motions. 20. Order for production. 21. Costs. 22. Enforcing decrees and orders. 23. Affidavits. 24. Examination of witnesses. 25. Discovery. 26. Security for costs. 27. Payment into and out of court. 28. Appeals from county courts. 29. Appeals to House of Lords. 30. Cause of nullity.

Appendices of statutes, rules, forms, fees, and costs.

Although the first chapter opens with a quotation from Ariosto, and there is throughout the work, on the part of the authors, or of one of them, a greater display of ultra professional reading than we are accustomed to expect in legal treatises, we are bound to say that the work is, as a whole, thoroughly practical, complete, and reliable. Occasionally the reports themselves furnish matter of a kind which Lord Lyndhurst was accustomed to describe as "ornamental." Thus, in illustration of the qualification of the general proposition as to the conclusiveness of a probate, that the Court must have jurisdiction; so that it may be shewn, for example, that the supposed testator is alive, we are told in a note, that "the late Sir Charles James



money lent on the condition of receiving a share of profits, and that lent at a fixed rate of interest, so far as the general creditor was concerned. There might be fraud connected with the withdrawal in both cases, but the law would reach a transaction of that kind.

Mr. *Bovill* challenged any member of the Government to deny, that under the wording of the clause cases similar to that which occurred at Liverpool might not happen every day. A man lending 50,000*l.* might draw out of the profits of the concern 100,000*l.*, assuming that so much was made in the course of a single year, and after that might draw out his 50,000*l.*; and yet in the next year, if it happened to be a season of loss, he would be absolved from any liability whatever.

The *Solicitor-General* said the bill did not absolve anybody, and simply enabled a man, instead of lending money at a fixed rate of interest, to take a certain share of profits without becoming a partner. If no profits were made he did not receive anything, and to that extent inchoed less on the general fund available for creditors than if he took a fixed rate of interest.

Mr. *Horsfall* admitted that the clause did put the lender in a somewhat advantageous position, but suggested as a safeguard that some limit might be fixed within which money drawn out should still be liable to the debts in case of bankruptcy before that period had expired.

The clause was then agreed to.

Clause 2 was temporarily postponed; and clause 3 was agreed to, with a verbal amendment, suggested by Mr. *Horsfall*.

Clause 2 was then taken up again, and several verbal amendments having been made in it.

Mr. *Moor* opposed the motion, that it be agreed to as amended. In doing so he felt that he was not opposing, but forwarding, the principle of the bill, clause 2 being inconsistent with its immediate predecessor. The object of the bill was to encourage loans of money to traders; but by this second clause the lender was subjected to this penalty—that he should not be repaid his loan in case the trader became bankrupt until all the creditors were first satisfied. That amounted to an absolute prohibition; for in ninety-nine cases out of a hundred a trader failed to pay 20*s.* in the pound. No person would lend money on such conditions, when by lending upon a promissory note or a bill of exchange he could get 30*l.*, 40*l.*, or 50*l.* per cent. interest; and if the worst came to the worst still be able to go in and prove his debts, and receive an equal dividend with all the other creditors.

The *Attorney-General* said, the strongest argument in favour of the present state of the law was, that a man might positively, under a change of the law, carry on a business which was not substantially his own without incurring the risks of the business. Now, this bill did not in any way interfere with the person carrying on a trade. Credit was given to the trader on account of his visible means or stock-in-trade. But, supposing the person who went shares in the risk furnished all the means, then the whole resources of the undertaking would be derived from the loan so made, and the person who advanced the money had sent the trader into the world with the appearance of solvency, the stock-in-trade ought in the first instance to be subject to the ordinary creditors. It had been suggested that the real trader might not hold out his name to the world; that he might furnish all the means, and stipulate for the whole of the profits, and in that way avoid running any risk. Well, this clause was intended to supply a practical security against any evasion of the law of that description. What was proposed by the hon. member for Brighton would go a vast deal further, for it would enable the person who might be the real trader to come in at the last moment and sweep away the ostensible means of business with the other creditors, or perhaps in preference to them. It might be said that the possibility was left open of practically doing the same thing by means of loans at an exorbitant interest. That was an objection which deserved to be carefully considered. His own opinion would be by no means unfavourable to the drawing of a line, if it could be done, beyond which it should be determined that a high rate of interest was a mere cover, and of placing such persons in the same situation as the lender who contracted for a share of the profits. But they had better do one thing at a time. They were dealing now with an important branch of the law

of partnership, and he believed the proposed change would be a great boon to the trader. Let them do what they could do at present, and under such safeguards as they believed to be desirable and good, and if found to work well, it might afterwards be considered whether there were not other cases to which it might be expedient that the same rule should be extended. But there was an important practical distinction between the cases. If the person carrying on trade borrowed money at an exorbitant interest, he made himself liable to pay both that interest and the capital, whether the business was prosperous or the reverse. That person would see, therefore, that it was very much to his advantage to procure money on the terms of sharing in the profits, and it would be also to the advantage of the lender to lend upon such terms. He was of opinion, then, that they would be proceeding safely and cautiously, and taking good securities against abuse if they were to adopt this clause.

Mr. *Henley* was not convinced by the arguments of the hon. and learned gentleman. It was clear that the Government were afraid of their own measure. He had voted for the second reading, because to lend money in the way proposed by the bill was a fair legal transaction. But he did not see why they should put a penalty on that which they said was a loan. If the *Attorney-General's* argument was sound, he doubted whether the bill was sound.

The *Attorney-General* said, that if a man lent money at the ordinary rate of interest, he could not be said to be investing it in the business, because he left all the benefit as well as all the risk to the man who was carrying on the trade.

Mr. *Hubbard* said, that of the two arguments, that of the hon. member for Brighton appeared to him more consistent. If the lender had nothing to do with the loss while the trader lived, why should he be saddled with the loss when the trader died? He agreed with the *Attorney-General* that it might become necessary to bring in a bill to put some check on the rate of interest in certain transactions. Hon. members talked of the ordinary rate of interest, but the interest of money had varied from 1*l.* 10*s.* to 10*l.* per cent. within a few years. There was now no such thing as a legal rate of interest. He would not vote for the expurgation of the clause.

The clause was then agreed to, as were the other clauses.

On the motion of Mr. *Milner Gibson*, a new clause declaring that the receipt of profits in consideration of the sale of goods shall not make the seller a partner, was agreed to and added to the bill.

Mr. *J. Peel*, who had given notice of a new clause providing for the registration of lenders and borrowers, said, that as the hon. and learned gentleman (Mr. Selwyn) had placed upon the paper a new clause on registration he would not press his own clause, but would accept that of the hon. and learned member, with the addition of a few words which he would propose.

Mr. *Horsfall* said that there was a great difference between the two clauses, and he much preferred that of the hon. member for Tamworth.

Mr. *Selwyn*, in moving a new clause providing for registry by the registrar of joint-stock companies, said that it was similar in principle to one which was carried in committee last year, and added to the bill. He did not dispute that limited liability had met with large success, and had made much progress; but the House ought also to remember the very large losses which had been occasioned by it, and the litigation to which it had given rise. No doubt it had been well received by the mercantile world, but experience had shewn the wisdom of Parliament in the safeguards it had provided, and especially in compelling companies to use the word "limited" in their titles. He trusted that the House would proceed with the same caution. The hon. member for Bridport had on a former occasion put before the House what was called the sentimental view of the subject. He had imagined the case of a young man of industry and ability, but lacking means, and he said it was very hard that a capitalist could not lend this young man money with which to carry on his business without making himself liable for his last acre and his last shilling. The House might assume that the capitalist, like most others of his class, would take care of himself. He might stipulate for 19-20ths of the profits, and the interesting youth would get the rest. That being so, the latter would carry on business upon a different basis from that of his neighbours, and in all probability would be more

speculative, because he had so little to lose. Ought not the public to have some safeguards in order that they might know the actual state of things? Of course, all would be well so long as the business prospered, but when the crash came, and the young man went into the Gazette, the 19-20ths of past profits would be beyond the reach of creditors. Thus, the tendency of the bill would be to increase throughout the country the aggregate of bad debts, which was already very large, had increased considerably under the influence of recent legislation, and was a heavy burthen not only upon creditors but the whole community. It was not too much to say that the price of everything we ate, drank, or wore was considerably enhanced by what was termed the allowance for bad debts, and that the aggregate amount was equal to that of any tax imposed for the benefit of the Imperial Exchequer. This bill would give facilities to capitalists for increasing the amount of bad debts throughout the country unless some safeguard were introduced for the protection of the public. The clause he proposed was in no way inquisitorial; it simply required that the fact that a person who was carrying on business on this system different from that of his neighbours, should be made known by the addition of the word "registered" to the style of his firm. It was said that this requirement would cast a stigma upon the firm, but in what did the stigma consist? There was no greater stigma in the use of the word "limited" in the case of a limited liability company. He proposed the following clause:—"A register shall be kept by the registrar of joint-stock companies, in which shall be entered the name of every person or partnership contracting any loan under the provisions of this act, and this act shall not apply to any person entitled to participate in the profits of any trade or undertaking unless the same shall be carried on under a name or firm concluding with the word 'registered,' and by some person or persons whose name or names, or whose style or firm, shall be entered in the said register."

Mr. *Cave* said that the case of a "limited" company was quite different from that of a firm availing itself of this bill. In one case the partners were not liable to the whole extent of their fortunes, and it was absolutely necessary that this fact should be known to the world. But here the persons who appeared before the world were liable to their last penny. Why, then, should the word "registered" be put after their names? Such a mark would really shew the public that they had a better security than they thought existed, and it would tempt them to give greater credit than before, because they would then know that they not only had the security of the partners whose names appeared, but the money of certain capitalists besides. (!)

Mr. *T. Baring* said that if this word was not a stigma, and was likely to give the firm a standing with the public, there could surely be no objection to the use of it, inasmuch as it would do the firm no harm, and supplied information which the public ought to know. These persons, though called lenders, were really traders; yet, while they shared the profits, they might guard themselves against a share of the loss. It was only fair to the public, then, that they should be apprised when any firm was profiting by the provisions of this bill.

Sir *F. Crossley* could not understand why registration should be required in the case of money lent at a variable rate of interest any more than when money was lent at a fixed rate. The House should take it for granted that people could conduct their own affairs, and would not trust others foolishly. The hon. and learned gentleman said that a person lending money might take almost all the profit of the business, but it was not likely that a man working a concern, and exerting all his ingenuity in carrying on the business, would allow nearly all the profits to be carried off by another. But whatever the arrangement might be, it was entirely matter of bargain between the borrower and lender, and he did not think that the use of the word "registered" was at all necessary.

Mr. *Milner Gibson* thought that the proposed clause, if added to the bill, would very much prevent it from being of any use. In looking back to past times they found that there had been constant difficulty about letting people make contracts with respect to money, and it was only after a great struggle that persons were permitted to borrow money at any rate of interest. It was now said, that if persons in trade borrowed money at a fluctuating rate of interest, they ought to be registered. He could see no sense in that pro-

position, and, indeed, he regarded it as opening a door to fraud, for a man might get a spurious credit by writing in a book in a public office, that some person had lent him 10,000*l.* or 12,000*l.* There was no provision in the clause against a fraudulent entry. No man was obliged to give another credit; and if people were asked to supply an individual with goods, or to lend him money, it was their business to see that he was a person who could be relied on. Seeing that all the members of great joint-stock associations possessed the advantage of limited liability, he thought that in justice the House should remove every obstacle now standing in the way of the operations of private traders.

Mr. *Heygate* supported the proposed clause.

The Attorney-General disclaimed the interpretation which had been put upon his former arguments by the hon. member for the University of Cambridge. What he had expressed last year, and what he still adhered to, was the opinion, that it was proper a partnership should appear to the world to be what it really was. Speaking of the bill brought forward last session by the hon. member for Birmingham, he had said, that if they created a new description of partnership, having in it some members with limited liability, and some without it, it was right that that new description of partnership should be advertised to the world as what it was—a partnership of a peculiar kind newly constituted under a particular law. But the present bill proceeded on a better principle than that measure of last year, making a man no longer a partner merely because he lent a sum of money to a trading concern. His hon. friend's amendment was absolutely needless as applied to the bill as it stood, and to be good for anything it ought to be carried much further than he intended to carry it.

Mr. *C. Turner* maintained that a man who lent money on condition of receiving a share of the profits was really and practically a partner. He was a partner as far as regarded the profits; the only thing was that the bill would relieve him from the position of a partner as far as regarded the losses. The President of the Board of Trade said there was no difference between a person who lent money for a rate of interest, and one who lent money for a share of the profits; but in practice there was a great distinction between them, and it seemed to him that the parties who objected in these cases to the word "registered" must be ashamed of the real nature of their transactions. If they meant fairly by the public, and did not intend to deceive it, he could not see why they should have any aversion to that word; and he should, therefore, cordially support the amendment.

Mr. *Bovill* said, that a division took place in the House last year on the very point they were now discussing, when the Attorney-General supported a clause to the same effect as that of the hon. member for the University of Cambridge. The House then affirmed the principle of registration, and thereupon the bill was abandoned.

The committee divided—

For the clause	..	..	..	..	65
Against	..	..	..	..	105

Majority against the clause .. .. 40

Mr. *Horsfall* then moved the clause of which the hon. member for Tamworth (Mr. J. Peel) had given notice, and which differed in one important respect from that which had just been negatived by the committee. The clause ran as follows:—"The names, addresses, and descriptions of the lender and borrower, the amount of the loan, the time of repayment, and the proportion of profits to be paid on the loan, shall be registered at the office for the registration of joint-stock companies; and any variation in the amount of the loan, or in the proportion of profit payable upon it, or any extension of time for repayment, shall also be registered in like manner."

The committee divided, the numbers being—

For the clause	..	..	..	..	59
Against it	..	..	..	..	101

Majority .. .. 12

Mr. *Bovill* then proposed a clause of which he had not given notice, the effect of which was understood to be that a lender, if he withdrew his capital on which the credit was created in case of bankruptcy, should be liable for the profits of the twelve months before the bankruptcy.

Mr. *M. Gibson* said it was inconvenient to discuss a clause

of which notice had not been given; but he was informed that the law as it at present stood would meet what he understood to be the proposition of the hon. and learned gentleman.

Mr. Bovill said that certainly the law would not meet the case which he had suggested, and which would frequently occur under this bill.

The Attorney-General said that, in the judgment of his right hon. friend and his own too, the law as it was would do as much as it was politic or necessary to do, and would deal with all cases of collusion between debtor and creditor for the withdrawal of capital within the year of bankruptcy. Although he did not pretend to say there might not possibly be some cases in which creditors might be defrauded, he thought that the bill provided reasonable securities, by exposing to the risks of trade capital embarked in a business, and not withdrawn, and leaving to the operation of the law as it now stood cases in which such capital was collusively withdrawn.

Mr. C. Turner thought that some protection should be afforded to the public against cases in which capitalists embarked their money in a business with the intention of enjoying the profits, and put an irresponsible party forward as the owner of that business.

The clause was then negatived without a division.

Friday, May 19.

#### ATTORNEYS' CERTIFICATE DUTIES.

On the motion for going into committee of supply,

Mr. Denman rose to move that, in the opinion of this House, it is just and expedient that the annual duty payable upon certificates taken out by attorneys, solicitors, and proctors in England and Ireland, and by writers to the signet, solicitors, agents, attorneys, and procurators in Scotland, should be abolished. A few weeks ago the hon. and learned gentleman said he, in common with most other members, was entirely ignorant of the details of this tax, but having been waited on by various gentlemen representing that branch of the profession, he had promised to look into the matter; and having done so, he had come to the conclusion that they had a real grievance, and that this was one of the most unjust charges levied on any part of the community. Every solicitor and attorney must necessarily pass through an expensive education. When he took out his articles he had to pay a stamp duty of 80*l.*, and when he was admitted he had to pay a further tax of 25*l.*, making a total tax of 100 guineas—a larger sum than was paid by barristers or any other profession. The attorneys did not complain of this, however, for they thought that when paid *à la* done with once and for all, and they would not be called on to pay again. But that was not all. Before he could do a single thing, before he could know whether his business would be lucrative or not, he had to go to the Stamp-office, in the month of November or December, and pay a tax of 9*l.* in the metropolis, or 6*l.* in the country, which was a license for him to carry on his business during the year. The tax dated from the year 1785, when Mr. Pitt had a deficiency of 413,000*l.* to supply. Mr. Pitt did not mention the tax in his budget speech, but proposed a shop tax and a tax on maid servants, both of which were very unpopular; and in the debate which occurred, a Mr. Medley suggested, that instead of these duties a tax should be imposed on gentlemen of the bar and the solicitors. Other members supported the suggestion to tax lawyers, and Mr. Pitt said there were several motives of various kinds for the suggestion, among which he named "resentment." However, it was dangerous for private members to suggest new imposts to the Chancellor of the Exchequer; for it having turned out that there was a deficiency of 20,000*l.* on the shop tax, Mr. Pitt said he would resort to a tax against which he was not apprehensive of having any objection raised, viz. a tax "on certain practitioners in the law." Mr. Pitt acted on the hints which had been thrown out, by placing a tax of 5*l.* on London attorneys, and one of 3*l.* on country attorneys. He proposed at the same time to impose a tax of 2*s.* 6*d.* on each warrant of arrest which those attorneys issued. The latter impost, which the attorneys did not feel, had been abolished, but the other remained unaltered, or had been increased between the date at which it was laid on and the year 1815, and, in addition, a large sum was imposed as a

payment on signing of articles and entrance to the profession. In 1815 the annual tax was again increased, and became 12*l.* for attorneys practising in London, and 8*l.* for those in the country; and so it remained till 1853, when an alteration was made by the present Chancellor of the Exchequer, though several times from the year 1850 the House had shewn itself decidedly favourable to propositions made by the present Lord Ebury, then Lord Grosvenor, for the relief of the attorneys. In April, 1853, the second reading of the bill was postponed, on the understanding that the Chancellor of the Exchequer would deal with this subject in his budget. That expectation, however, was not fulfilled, so far as the reduction of the annual certificate charges was concerned, and up to the present time the question had remained in abeyance. The total amount of this tax upon solicitors, attorneys, and writers to the signet in Great Britain was 88,969*l.* 10*s.* He trusted that Parliament would not, for the sake of so small a sum, continue to impose an unjust tax, which represented an additional income tax upon a supposititious income of 540*l.* per annum in London, and of 360*l.* in the country, when in fact the person taxed might not be earning a farthing. He had received by post a document which professed to come from auctioneers and pawnbrokers, giving a long list of what trades and professions were taxed. Few of those instances were analogous to the case now before the House; and even where there was an analogy, he should suggest to those who were anxious for relief, that their surer course would be to support the repeal of this duty, because the doing of justice to one trade or profession would increase the claims to relief of those which remained subject to exceptional taxation. Another argument against the abolition of this tax was, that the surplus was a very modest one; but no surplus could be considered a modest one which was, in fact, made up of the produce of an unjust tax. If the Chancellor of the Exchequer stated, upon his responsibility, that this tax could not be parted with during the present year, he would not factiously press forward a bill to impair the surplus; but he was anxious that there should be no chance of its being said next year that the question had been allowed to slumber since 1853; and he desired to obtain an expression of the concurrence of this Parliament, with the opinions pronounced by the Parliaments of 1850 and 1853, that this was an unjust and inexpedient tax. If he obtained such an expression of opinion, he hoped that when the bill for the abolition of the duty was introduced early next session, the Chancellor of the Exchequer would bow to the decision of the House, and abandon the duty. The tax had been condemned by high authorities, for among those who voted for Lord R. Grosvenor's bill were the right hon. gentleman the member for Bucks, the hon. and learned member for Belfast, the present Solicitor-General, and Lord Chief Justice Cockburn. The hon. and learned gentleman concluded by moving that, in the opinion of this House, it is just and expedient that the annual duty payable upon certificates taken out by attorneys, solicitors, and proctors in England and Ireland, and by writers to the signet, solicitors, agents, attorneys, and procurators in Scotland should be abolished.

Mr. Vance supported the amendment, observing that the tax pressed with the utmost severity on solicitors in Ireland, to which country it had not been extended until 1806, when the Chancellor of the Exchequer of the day was under the influence of great pressure, and levied a tax upon silk stockings and persons wearing watches.

Mr. Hunt, while declining to enter into the merits of the question, protested against its being raised at the present moment, affecting, as it did, the interests of so many persons employed in electioneering throughout the length and breadth of the land.

Mr. Humberston, Mr. Black, and Mr. Clay supported the amendment.

The Chancellor of the Exchequer.—In rising to state the reasons which induce the Government to offer a stout resistance to the proposal of my hon. and learned friend, I shall not say one single word that can be construed into disrespect towards my hon. friend, or towards that most valuable and useful profession whose interests are in some degree involved in this debate. We know that vulgar insinuations are sometimes heard with regard to that profession, which, while it affords the noblest scope for the highest qualities, affords scope also for those that are lower. But for myself, I have always held the opinion, that a worthy and honourable soli-

citor is himself one of the most valuable members of society; nowhere is the principle of honour to be found in a purer state, and it is no less pure because it is combined with the most enlightened and disinterested prudence. I am sorry that the researches of my hon. friend, the member for Chester, into the Parliamentary history of this question, have stopped short of the point of greatest interest. I am not going to allege that there has been any compact; the solicitors are free to raise this question at any time, and in any manner they think fit. But I so far agree with what has fallen from the hon. member for Northamptonshire, that I do think the external proprieties would have been more consulted, if the application for the removal of this tax had been made at a period somewhat more remote from the great event likely to happen in a few months. After a long Parliamentary agitation of this question, the House of Commons in 1853 came to a decision, the result of which forms the last Parliamentary declaration on the subject. In favour of the second reading of the bill for abolishing this duty, 102 ayes voted, but the measure was negatived by 186 noes. My hon. friend quoted with great emphasis and unction some words of Chief Justice Cockburn, who, at one period of his life, ill advised and imperfectly informed, thought fit to denounce this duty. But the latest and most important act of Chief Justice Cockburn was in a very different sense; and my hon. friend will be glad to learn that the name of Chief Justice Cockburn appears in that majority of 84 which sanctioned the continuance of this tax. My hon. friend has said, that if I assure him there is no available surplus which can properly and safely be applied to the purpose which he has in view, he will not force on his proposal in the shape of a bill. Giving credit to my hon. and learned friend for the candour and moderation which distinguished his speech, I must say that I have objected, and always will object, as opposed to the true interests of the country, and as detracting from the character and dignity of this House, to all attempts to pledge the future by abstract resolutions. My hon. friend has employed the old stock argument about no time, either before, after, or during the budget, being the proper time for bringing forward a financial proposal. That would be an excellent argument if it were true. The time to bring forward any proposal is when the House has all the other proposals before it; it can then either adopt the plans of the Minister, if it deems them best, or substitute any other for them. But it cannot be regarded as a practical course, to bring forward a single proposition, pledging the House to a certain line of conduct, in order that credit may be gained with a portion of our constituents, being utterly uncertain whether it may ever be in our power to redeem that pledge. We have no right to suppose that because we began one year with a small surplus, and ended it with a large one, such will always be the case; and there is nothing in the circumstances of the present year that should warrant us in departing from the general rules of prudence that govern our action. With regard to the general argument, I am no great admirer of these taxes: but, in considering taxes as they affect a particular class, it is a fact of the greatest importance that they have been paid for several generations. This, in the end involves no hardship, for the trade or profession adapts itself to the burthens it has to sustain, and the amount of remuneration bears a proportion to those charges. I am sensible that there is something invidious in the nature of this tax, but I deny that a case has been made out to distinguish it from all other annual duties payable by professions. How can you say that it is right to tax trades, and that it is wrong to tax professions? Is there anything in the trade of an auctioneer that ought to be discouraged by this House? Why should the trade of a pawnbroker be taxed? He is the man who minister to the first necessities, in the matter of money, of the lowest class of the population, and every farthing of what is drawn from the pawnbroker is taken from the pockets of the poor. We lay a tax of 48,000*l.* upon hawkers. The whole of this sum comes from a trade which is pursued in minute details by men hardly one of whom is worth 100*l.* of capital in the world, and who drive their trade in the villages and among the peasantry of the country. There is nothing in the question of the permanent retention of this tax that is not fairly open to the consideration of the House; but not at the present moment, and under existing circumstances. If you want to give relief, the true way is to look first at the case of those heavy taxes on admission,

which are a tax in favour of the rich and against the poor, inasmuch as they require an advance of capital from the youth to the State before he is allowed to carry on his business. That is a question which, if my hon. friend ever proposes to deal with by a bill, I shall feel it my duty to raise and argue at length.

Mr. *Craufurd* said that the House ought to know the circumstances under which the majority on the last division was obtained. There were two proposals for reduction of taxes before the House—the abolition of advertisement duty and of the duties now under discussion. The Chancellor of the Exchequer told the House that the Government could not afford to part with the money from both. The House gave the preference to the abolition of the advertisement duty, and he (Mr. *Craufurd*) having been somewhat active in promoting the repeal of the advertisement duty, and having obtained what the right hon. gentleman called a “snap division” in its favor, voted on that occasion against the repeal of the annual duty paid by attorneys.

The House then divided—

For the amendment .. .. .	148
Against .. .. .	143
Majority .. .. .	5

#### COUNTRY VOTERS' REGISTRATION BILL.

This bill was read a third time, and passed.

#### MASTER AND SERVANT.

On the motion of Lord *Elcho*, the Select Committee on Master and Servant was ordered to consist of seventeen members:—Lord *Elcho*, Mr. *Cobbett*, the Solicitor-General, Sir *J. Ferguson*, Mr. *Daglish*, Mr. *G. Hardy*, Mr. *E. Potter*, Lord *Stanley*, Mr. *W. E. Forster*, Mr. *Hennessey*, Mr. *Roebuck*, Mr. *Lowe*, Mr. *Jackson*, Mr. *Algernon Egerton*, Mr. *Alderman Salomons*, Mr. *Clive*, and Mr. *Cox*.

Monday, May 22.

#### PARTNERSHIP AMENDMENT BILL.

The report of amendments in this bill was agreed to.

Tuesday, May 23.

#### MR. H. S. WILDE AND THE LEEDS COURT OF BANKRUPTCY.

Mr. *Ferrand* moved for a select committee to inquire into all the circumstances connected with the resignation of Mr. *Henry Sedgwick Wilde* as registrar of the Court of Bankruptcy at Leeds; the granting him a pension; the appointment of Mr. *Welch* to the said office; and whether he was to resign his appointment in favour of the Hon. *Richard Bethell*, and receive another appointment in London.

After a discussion, in which the Attorney and Solicitor General, Mr. *Disraeli*, Mr. *Roebuck*, Sir *G. Grey*, Mr. *Heggate*, Mr. *Malins*, Lord *R. Cecil*, Mr. *Hadfield*, Mr. *Duncombe*, and Mr. *Ayrton* took part, the motion was agreed to.

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## THE JURIST.

LONDON, JUNE 3, 1865.

THE READERSHIP ON LEGAL HISTORY  
AND CONSTITUTIONAL LAW.

THERE is an article in the *Saturday Review* on this subject, which suggests some observations upon it. The drift of that article is, in short, the abolition of the readership, and, indeed, of all the readerships, as they now exist. The ground upon which this is put is rather narrow—that they involve, as they now stand, the duty of tuition, and that it does not suit the writer of the article to attend to tuition, while it would suit him to deliver occasionally some lectures. Though, indeed, why lectures should be retained is hard to see; since the writer urges, that lectures, at all events, as now delivered, contain nothing which might not as well be read. So that while tuition he thinks “gossip,” he considers lectures of no particular advantage. He can see no advantage in oral distinction in any way, and, hence, he is more consistent in suggesting the total abolition of the readerships as they exist, than in recommending mere occasional lectures as the substitute. He is, indeed, utterly illogical and inconclusive; he sneers at the tuition portion of the duties of the readerships as a bad imitation “of college tuition;” leaving it uncertain whether he considers the fault is that it is a bad imitation of it, or that it is an imitation of it at all; whether college tuition is a bad thing, or whether tuition at Inns of Court is bad, because it is like it, or because it is not like it. On the whole, however, he appears to be rather against it, at all events, as applied to legal history and constitutional law, though why it should be bad on those subjects he does not explain; and, as already mentioned, he desires to abolish the readerships altogether as they now exist, that is, with tuition. The only reason he gives applies as well to all as to any; to college tuition as to that of Inns of Court; for it is, that is not easy or not possible to teach grown up men in that way. As the youth who enter at Inns of Court may be as young as many who enter at colleges, and few can be much older, one does not see the force of this; and as, of all the subjects that could possibly be suggested, those of legal history and constitutional law are precisely those best fitted for tuition, as being least dry and most susceptible of interesting illustration, it is impossible to feel the force of any peculiar objection to tuition on those subjects, though one can well conceive in the mind of a person who imagines tuition to be gossip, that it may appear of little value on any considerable subject. He thinks the readership, as it stands, is a mere “shelf,” and of little use as now discharged. He would lecture, he says, in a more “speculative manner;” and the better to provide for existing and speculative views, his idea is, that the readerships being abolished, as they now stand, gentlemen be invited from year to year to deliver a course of lectures on some favourite subject, without any tuition at all. The one great

reason for this change is, that men in business cannot attend to tuition, while they can occasionally deliver a course of lectures. So that, by a constant succession of yearly appointments, most men at the bar in business will be able to deliver such a course of lectures on some subject or other.

Now, all this simply betrays an entire unacquaintance with the history of the office, and with the true nature and character of its functions and duties. And as this is itself a portion of “legal history,” it may be of some interest to elucidate it. It is notorious that the object of the establishment of the Council of Legal Education, and the great object of their efforts, has been to revive and restore in the Inns of Court their pristine functions of legal education. Nothing can be more clear than that, in their origin, they were simply legal colleges. Fortescue distinctly tell us so. “Wherefore, while the laws of England cannot be conveniently taught or studied in the universities, they are taught and learned in a certain place of public or common study, more apt for attaining unto a knowledge of them than *any other university*; . . . and where the laws are *read and taught* as in common schools”—that is, as at the schools of the universities. (De Laudibus Legum, cap. 48). And it abundantly appears, that the “benchers,” as they are now called, or the “fellows,” as they were called of old, were really the fellows of a college, and were all tutors in their turn. There is clear record of the appointment of readers ever since the time of Edward IV. (Vide Dugdale's Orig. 243-249). What manner of office that of the reader was, and how it was discharged, may be gathered from that and other works, and from the records of mootings or readings; and it is manifest that the functions of readers were just those of college tutors and professors. They lectured and gave readings, and also had oral discussions with the students, or “mootings,” as they were called, in which moot points were discussed. Dugdale gives an ordinance, by which each member was bound to be present at the readings. The discussion of moot points is often mentioned. As regards the more formal readings or lectures, what they were may be seen from that fine specimen, Callis's Reading on the Statute of Sewers, which is a perfect mine of legal learning on its subject—the fruits and result, as he himself tells us, of twenty years' labour while at the bar. It is replete with erudition; a masterly exposition of the whole law and legal history of the subject; abounding with apt and accurate references to authorities, and shewing an intimate acquaintance with all the sources of our law and legal history from the earliest times. Callis himself tells us that this was the fruit of twenty years' labour; and one can well believe that not less than that period would suffice to attain such prodigious learning, and such consummate mastery of the law. Such were the manner of men selected for the office of reader, and such were their readings or lectures. These were not speculative men; their tuition was not likely to be gossip. Neither were they likely to be men of much forensic business or practice. Whatever practice they had was probably more as chamber counsel; the busy life of the bar would hardly leave

them much time for the requisite study and research. Indeed, as a fact, the names of the most eminent readers are unknown at the bar. One may look in vain through the Reports for the name of Callis. So of Marrow, whose reading on the Office of Justice of the Peace he so highly eulogises, who has ever met with his name? The truth is, that the forensic character is not only not at all like the academic, didactic, or scholastic, but it is utterly opposed to it; and it is manifest, that as few men gain great success at the bar who are not specially gifted for it, and their order of gifts indisposes them to academic habits or aptitudes, they would be unfitted to be tutors, and so unlikely to be readers. The readers were essentially tutors and professors. They were not even in business at the bar as advocates. That is a business which expressly engrosses a man's energies when once he gets into it, and at once requires and fosters habits and aptitudes the reverse of academic, and likely to breed a distaste for tutorial duties. Thus it is that so few, if any, of the readers are known to fame, or are known even to have achieved forensic reputation. Our ancestors had not the narrow notion which restricts all excellence and ability in the profession to the forensic field. They knew that men who had no ability as advocates might have great talents for tuition, and that a bad orator might be a first-rate tutor, reader, or lecturer. Hence they provided a field and a career for such men, and made good use of them for legal education, and thus secured the full value of their abilities and learning in training the youth of the profession. And while the Inns of Court retained the ancient constitution, their functions were thoroughly educational, and the office of benchers or fellow was strictly professional and tutorial. The term "bencher," it is believed, is comparatively modern; the ancient word was "governor;" and the rulers of the Inns of Court were not necessarily or usually men in much business at the bar; they were rather the heads of legal and academical societies. Hence they were all suited for the office of tutors or professors, and took it in turns. Callis speaks of taking his turn, and tells us that it was more than twenty years before his turn came. The whole of that period was devoted to legal study; learning not only in chambers, but in courts; for men might learn in courts who did not practise there, at all events, who did not practise in a forensic sense. There were law reporters, for instance, who achieved eminence and reputation as such, although little known as advocates. In short, the profession of the law had its various walks or fields meted out to men of diverse abilities, or gifts, or aptitudes. One man had a gift for advocacy, another for counsel, a third for reporting, a fourth for tuition. Our ancestors wisely made use of them all, and gave to each a career. If the labours of each were useful to the profession, each in his measure was entitled to reward, and had it; and those who had great success as advocates were not deemed to monopolise all the merit of the profession; on the contrary, as their labours were mostly for themselves, and had their own reward, in wealth and professional advancement, the men who

most attained to this success were often anxious to enhance it by some services to the profession in treatises or reports. Thus it was with men like Coke, and Hobart, and Croke. Men like this, however, who had great success as advocates, could not work for the profession until their time of leisure and retirement came. It was at the end of their lives they set pen to paper, and put forth learned works; and having worked all their lifetime for themselves, they at the end laboured a little for the profession, or a future age. In the meantime, what would become of the profession but for others, who worked hard all their lives as reporters or readers, and legal tutors and professors? Thus it was with many unknown to fame, of whom the names of but a few survive, and of such was Callis. Thus it was more or less with all the benchers of our Inns of Court until the time came when, by the creation of Queen's counsel, about the time of Elizabeth, the constitution of the Inns of Court was changed. The Queen's counsel became the benchers, and being all men of large practice, they ceased to be readers. They had not the time, nor perhaps the aptitude for tuition. They had no taste for learned "readings" or "mootings." They were engrossed by their contests and triumphs in court. Then came an age of revolution, and organic changes in the State; and in the tumult many old legal institutions became obsolete; as, for example, official reporters and readers. Benchers were, it is true, named as "readers," but only as an honorary distinction. The benchers for the most part had become men in large forensic practice, and had no time or taste for tuition. The forensic spirit is not akin to the didactic or academic, and readerships became mere forms and names. The result was, that legal education declined. Declined, as classical or mathematical education would have declined, had there ceased to be colleges, and tutors, and professors at our universities. Declined, for the same reasons and from the same causes; and, of course, the remedy could only be the restoration of those elements in our legal institutions, the decay of which had caused this decline—that is, the elements of legal education; in other words, the tutorial and professorial elements. In a word, it was necessary to make the Inns of Court, once more, as much as possible what they originally were, i. e. legal colleges; and, with that view, to revive the readerships as they originally were, that is, as professorships and tutorships. It was necessary to re-establish them as nearly as possible as they originally existed—that is, to have men to fill them as nearly as might be of the same class or order. Sound lawyers and good tutors, men who could give "readings" or "lectures" like those which were given of old; and hold mootings for oral discussion. But to do this, it would not do to have benchers as readers in rotation, for they belonged to a different order. They were men of forensic practice, not at all of the academic order. For the same reason, it would not do to have barristers in forensic practice, for, indeed, they could not be had permanently; and the idea of a casual, occasional, or temporary "reader" is absurd. Such a system never existed, and never could have existed. It is true, the readers were chosen every

year, but from a body who were all fellows and tutors; at all events, from a body all fellows, and fitted to be tutors, and merely becoming actual tutors in their turn—a body essentially academical and tutorial. The idea of a casual selection from a body of practising barristers, all absorbed in forensic practice, and filled with forensic ideas, was one too absurd ever to have occurred to our ancestors; and it is strange that any one at all acquainted with legal history should have suggested it. And certainly it did not occur to the Council of Legal Education, or, if it did, they very wisely discarded it; and they re-established the readerships as much as possible on their ancient footing, making only those alterations uniform which the altered times and circumstances, and especially the altered constitution of the bench, required—that is, they sought to secure as far as they could the services of the same order of men, to be rendered as much as possible by the exercise of similar functions—that is, educational functions. In short, the readerships were to be professorial and tutorial; and as the bench of an Inn of Court was no longer a body from which readers could practically be chosen, they established an office of reader on each of the great heads of legal study; and just as the reader of old used to select some subject of which he was master, so the Inns of Court select men as permanent readers on those heads of legal study over which they are supposed to have a mastery. It is obvious that the spirit and scope of the ancient institution are thus really revived and preserved, and the same result is attained. But it is also obvious that the permanence of the readerships, and their professorial and tutorial elements, are of their very essence—their permanence, for otherwise it would be useless to expect men of the proper order; and there would only be the leisure hours and spare energies of men in forensic practice, who, as already shewn, would most likely have no tutorial aptitudes. Nor, without permanence, would the office have that dignity, or importance, or status, which would open up a career, or hold out a reward for the life of labour required to qualify for it. Twenty years were deemed in the time of Fortescue not too long to devote to the attainment of an adequate knowledge of the common law, even at that time when its compass was but small; and we have seen that a single reading of *Callis* embodied the fruits of twenty years' labour and researches. And it is notorious that it is vain to expect, without many many years of study, a perfect mastery of any great field of knowledge.

Who is likely to undergo all these labours for the sake of delivering a casual course of lectures? Or, if he has undergone them, who will care to dedicate them to the profession in so inefficient and inadequate a mode? What are a mere isolated course of lectures? What are a succession of such isolated courses by different men, casually chosen? What are they likely to be? Will they be anything at the best but the means of ventilating vague and speculative views? Will they be replete with rich and varied learning? And even if they are, will they work much effect, apart from any system of study and tuition?

Will they do more at the utmost, than merely stimulate interest on some subjects? Will they do much, if anything, to enrich, to inform, to instruct, or to guide the legal students? What would our universities be with mere indiscriminate lecturing—without any course of study—any system of instruction—any tuition—any intercourse between the minds of the teacher and the taught? The very essence of the office of reader is tutorial and educational, and to eliminate from it those elements is really to destroy its efficiency; mere lecturing, apart from long study and systematic tuition, would degenerate into vague and fruitless declamation. Can any analogy be drawn between the office of reader to the Inns of Court and the lectures delivered by young men to articulated clerks, on the mere ordinary routine matters of the profession? The very name of *Callis* shews how far removed from this, and from the popular idea of lecturer, was the ancient type of the reader, which has been now revived. It is an office which requires deep acquaintance with the sources of our law and legal history, and accurate attention to facts and documents, and constant and careful reference to authority. All this requires years of research, and habits of research, not likely to have been acquired by men in business at the bar, constantly and casually selected. This is, above all, the case with the readership on legal history and constitutional law. In this, above all others, it is necessary to have a mastery of the documents and records of our constitution, and the sources of our legal history; our ancient Anglo-Saxon law, and our old Saxon and Norman chronicles; our old law writers—Bracton and Britton, Fleta and Glanville; our Year Books, and Books of Assize, and Books of Entries, and all our law reports, ancient and modern; our Statute Book from the earliest time to the present; the course and progress of law legislation; our works of legal or constitutional history—Hale or Selden, or Reeve or Hallam. How many men immersed in actual practice at the bar are likely to be masters of all these fields of knowledge? How many have written works on any branch of legal history, or any work shewing any great acquaintance with its sources and authorities?

It is to be observed, that this is a readership on legal history and on constitutional law. It is essentially a legal readership, as, indeed, all the readerships properly are; for the Inns of Court are seminaries of law—not of general literature or education. It is not a readership on history, nor even on constitutional history, nor on jurisprudence; it is a readership on legal history and constitutional law. No one is qualified for it who has not a complete mastery over the legal muniments and documents of our constitution, and the sources and authorities of our legal history. And what are they? We have described them. They are, in a word, legal records and reports. They are the statutes and charters of the realm, and the acts of our courts. Not only does it require a life of legal education to have a mastery of these, but it requires also a legal mind to rightly apprehend and expound them. And, more than all this, it requires a mind, on the one hand, enriched and informed by study and research;

and, on the other hand, practically acquainted, by presence in our courts, with the working of all the various institutions and jurisdictions which make up what is called our constitution, and which these courts exercise, administer, and control. No mere student could make a good reader on such a subject. He must have sat many years in the courts, as well as in his chambers. His knowledge must have been acquired in the tribunals as well as in the libraries of the law. He must have seen how all our institutions work; at all events, so far as their working is disclosed or controlled in courts of law, and so far as they are exhibited in their legal aspect—political institutions (as, the revision of the parliamentary registers), in one court; fiscal institutions in another court; judicial or municipal institutions in another court; eleemosynary institutions in another court. It would be a fallacy to suppose, as many persons do, that our constitution is only political. It has a far wider range and scope—so vast, indeed, that, the mind of no person would be enabled to embrace the whole, unless thus enlarged and expanded by constant presence for a long course of years in our courts, including, if possible, the “high court of Parliament.” Only thus, and not by sitting in the closet or studying in the library, can the vast range of our constitution be appreciated. And in addition to all this, there must be the gift of exposition and explanation; aptitude of illustration; capacity to make a legal subject interesting; the power of arresting attention, and fixing it; the faculty of stimulating the mind to exertion; fluency and fervency of speech; a ready flow of ideas; facility of composition and expression; in short, all the varied gifts of a good tutor and a good professor. But the basis of all is a fund of learning on the particular subject, not likely to be acquired except by twenty years’ study, and not likely to be of any use without twenty years’ exercise of mind, and pen and speech upon it. All these together make a good legal tutor and professor, and such should our readers be. If any are not so, the more the pity, and the more reason that in future they should be so. In the hands of an able man who had the requisite learning and abilities, the office would not be useless; it would be of inestimable value. It would not be sought by such a man, by any man of spirit, as a “shelf,” but as a high and glorious career, as opening a noble field of generous and laborious usefulness; as deserving, and indeed demanding, the highest exercise of his best and noblest faculties; as affording at once an adequate employment, and appropriate reward, for the studies and labours of long years, as well worthy of the utmost energy and the greatest zeal. It would be impossible to imagine a nobler motive, or a more powerful stimulant to continued energy and exertion, than being constantly called upon to meet a body of educated young men to expound to them some great theme, and discourse to and discuss with them upon it. It must have a tendency to incite the reader to continued exercise of his intellect and powers of thought, and it must constantly incite him to fresh exertions and researches, in order to sustain his resources; it must expose him to constant in-

quiries from intelligent pupils, which must test the possession of real knowledge of his subject; and by this constant contact of his mind with theirs, he must be enabled to see how far they follow him, and rightly apprehend and retain his instruction; while they, on the other hand, are able to make sure that they understand him. Thus the readings or lectures form the basis of discussion, and the discussions correct and apply the lectures. Thus the readers and the hearers go together through a sustained and continuous course of study, and the mutual action of their minds elicit from it all the advantage that can be derived from it, and stimulate to the utmost the exercise of thought upon it.

It is conceived, therefore, that the Council of Legal Education did well and wisely to restore the ancient office of reader, and that its essence is tutorial, so that the proposal to eliminate from it the tutorial or educational element is simply not only to abolish it, but to give up the whole plan of legal education altogether. This, indeed, would be a sad mistake, and the idea of substituting for it temporary and casual lectures is most unfortunate. For the ancient and honourable office of reader, a man of learning and ability may well feel an ambition; for the temporary office of stipendiary lecturer, he will feel very little desire. The one is an office of high legal scholarship, and deep learning, and careful tuition; the other is likely to lead only to vague declamation and visionary speculation.

### Correspondence.

TO THE EDITOR OF “THE JURIST.”

#### STAMP DUTIES ON TRANSFERS OF MORTGAGES AND CHOSSES IN ACTION.

SIR,—The stamp duty on a transfer of mortgage for any sum exceeding 1400*l.* is 1*l.* 15*s.* if no further sum is advanced, but where there is a further advance (say of 50*l.* to pay the expense of the transfer), the duty is not, as would be expected, 1*l.* 15*s.*, plus 1*s.* 3*d.*, the duty on the 50*l.*, but 1*s.* 3*d.* only. To remove this anomaly, the Chancellor of the Exchequer yesterday (as I observe in the newspaper), proposed to the House a resolution, the effect of which is, to impose a duty of 6*d.* per cent. on transfers of mortgages, with or without further advances, and a further duty of 2*s.* 6*d.* per cent. on the further advance. By this means transfers up to 1400*l.*, which now pay the same duty as original mortgages, will be relieved from a 2*s.* 6*d.* per cent., and subjected to a 6*d.* duty. Transfers exceeding 1400*l.*, and not exceeding 7000*l.*, which are now subject to a uniform duty of 1*l.* 15*s.*, will bear a 6*d.* duty, not exceeding 1*l.* 15*s.*; and transfers exceeding 7000*l.* will be subjected to additional *ad valorem* duty at 6*d.* per cent. beyond that sum.

The resolution does not, however, deal with the duties on transfers of bonds or warrants of attorney, which are in *pari delicto*, and which it would seem would remain subject to the same anomaly; nor with transfers of other choses in action, the duties on which, I venture to say, are not in a satisfactory state.

For instance, the duties on the transfer of a bond and warrant of attorney by the same instrument are separate, though both instruments may be given to secure the same sum. If judgment be entered up on the warrant, or recovered on the bond, the duty on the transfer of the security will be 10s. per cent. ad valorem duty, as upon an assignment on a purchase, and not as on a transfer; but if judgment be recovered on a covenant in a mortgage deed, and the mortgage and judgment be transferred, no additional duty will be payable on the transfer of the judgment. If a covenant, other than in a mortgage deed, be transferred, the duty will be 10s. per cent. ad valorem, though that on the original covenant is but 2s. 6d. per cent.; and there is this further peculiarity about the 2s. 6d. per cent. duty on a covenant, that it is only payable when it would exceed 1l. 15s. Again: the duty on a transfer of a simple contract debt is 10s. per cent., and not 2s. 6d. per cent. Thus, it will be seen that judgments, covenants, and simple contract debts are not subject to transfer duties, properly so called, and that bonds and warrants of attorney, though subject to transfer duties, cease to be so subject when judgments are recovered upon them.

The matter, I admit, is not without difficulty, owing to the comprehensiveness of such terms as debts and choses in action; but at present the difficulty is resolved by throwing the heaviest duty on the most doubtful and least valuable properties. No intelligible reason can be given for a difference of duty on transfers of mortgages, judgments, warrants of attorney, covenants, bonds, and simple contract debts; and in order to assimilate the duties, only a little care is required in the selection of apt language and the introduction of proper exceptions.

I am, Sir,  
Your obedient servant,  
FRANCIS PEACHEY.

79, Elgin-crescent, May 23, 1865.

### THE JURIDICAL SOCIETY OF BERLIN.

[We have received the following intimation through the Jurisprudence Department of the Social Science Association.]

The Juridical Society, at a meeting held this day, passed a resolution to offer a premium for essays on the following subject:—

"Is personal arrest admissible, as a means of execution in civil proceedings?"—and to lay down the following rules for the competition:—

1. It is required that this question of legislation be treated historically and dogmatically from the points of view of jurisprudence and political economy, with a comparative analysis of the laws in force on this subject among the various peoples governed by German and Roman law, more especially Germany, England, France, and the United States of North America.

2. The essays must be delivered in duplicate before the 1st March, 1866, to the secretary of the Juridical Society (Councillor of Justice Meyen, No. 65, Leipzigerstrasse, Berlin); they must be provided with a motto, and the name of the author added, in a sealed paper bearing the same motto.

3. Five members of this society, two of whom must

belong to the legal faculty of the Berlin University, will be elected as umpires by the written votes of the members present at the meeting in March, 1866.

4. The umpires' award and the names of the premiated essay, will be announced at the meeting held in June or September, 1866.

5. The premium for the best work is fixed at fifty fredericksdor (42l. 10s.), which will be paid over as soon as the name of the author of the premiated work is announced.

6. The premiated essay becomes the property of the Juridical Society. The author, however, retains the right of publishing it before the 1st September, 1867; and for this purpose is entitled to the copyright of the premiated essay.

COUNT WARTENSLEBEN,  
President of the Juridical Society.

Berlin, March 11, 1865.

### NEW CAUSES ENTERED IN TRINITY TERM.

#### COURT OF QUEEN'S BENCH.

##### CROWN PAPER.

Cheshire .....	Reg. v. Heath & ors.
Middlesex .....	Governor of Newgate.
.....	Whitechurch v. Board of Works of Fulham District.
Dorsetshire ....	Reg. v. Farrar & an.
Lincolnshire ....	Smith v. Smith.

#### COURT OF COMMON PLEAS.

##### NEW TRIALS.

Midd.—Williams v. Golding | Midd.—Edgell v. Day.

##### DEMURRER PAPER,

Thursday, June 8.

##### FOR SPECIAL ARGUMENT.

Cutler v. Larchin & an. (Case for arbitrator)	Metropolitan Board of Works v. Cox (Ap.)
Tamvaco v. Simpson (Case by order)	Ward v. Greenland (D.)
Pearson v. Tazewell (Ap.)	Thompson & ors. v. Hakewill (D.)
Vestry of Marylebone v. Virett (Ap.)	Pettitward v. Metropolitan Board of Works (Sp. C.)

#### COURT OF EXCHEQUER.

##### NEW TRIALS.

Anster v. Brown (Sp. C. by order)	Lord Colchester v. Kewney (Sp. C. by order)
Martin v. Barnard (D.)	West Hartlepool Harbour and Railway Co. v. Wood (D.)
Pearson v. Allaway (Sp. C. by order)	Belding v. Read (Sp. C. by order)
Senne v. Board of Health of Kingston-upon-Hull (Ap.)	Newstead v. Partington (D.)
Whitehouse v. Cambridge (D.)	Staindridge v. Barnsley (D.)
Collier v. Moss (D.)	Drake v. Pywell (D.)

##### ERRORS AND APPEALS.

Days appointed for Errors and Appeals after Trinity Term, 1865.

##### QUEEN'S BENCH.

Friday ..... June 16 | Saturday ..... June 17

##### COMMON PLEAS.

Monday ..... June 19 | Tuesday ..... June 20

##### EXCHEQUER.

Wednesday ..... June 21 | Thursday ..... June 22



## BOOK RECEIVED.

The Practice of the High Court of Chancery, with some observations on the pleadings in that Court. By the late Edmund Robert Daniell, Barrister-at-Law. Fourth edition, with considerable alterations and additions, incorporating the statutes, orders, and cases to the present time; and Braithwaite's Record and Writ Practice, together with references to a companion volume of Forms and Precedents. By Leonard Field and Edward Clennell Dunn, Barristers-at-Law, with the assistance of John Biddle, of the Master of the Rolls' Chambers. In two vols. Vol. 1, 8vo., pp. 948.—Stevens, Sons, & Haynes.

## Imperial Parliament.

## HOUSE OF LORDS.—Tuesday, May 30.

The County Voters Registration Bill was read a third time, and passed.

## HOUSE OF COMMONS.—Thursday, May 25.

## RECORD OF TITLE (IRELAND) BILL.

The Attorney-General moved the second reading of this bill. Its object was to complete the benefits derived in Ireland from the system of parliamentary titles provided by the legislation of late years. Under the Incumbered Estates Act property to an enormous value—not less than 23,000,000*l.*—had been cleared, and sent into the market with an unimpeachable parliamentary title. Since the passing of that act the Legislature had given to the Landed Estates Court in Ireland power to make a declaration of title, which should be a clear parliamentary title, to any owner of land in fee-simple, and the beneficial effects of that legislation could hardly be overrated. That legislation was imperfect, since there was no provision for continuing, as to future transactions, the parliamentary title once created, and for preventing the land from relapsing into its original condition of incumbrance. In 1862 acts were passed by Parliament for the purpose of simplifying the transfer of land in England, of enabling a parliamentary title to be acquired by means of the registration office, and of perpetuating it by keeping a subsequent record of all after transactions. The scheme was not compulsory, but permissive, and there was a drawback, which the good sense of the country was overcoming, against its efficient operation, arising out of the indisposition of solicitors and attorneys throughout the country to co-operate in carrying out a change of law which interfered with an important branch of business they had been in the habit of conducting, no doubt, with great ability, and perhaps with some profit. Under these circumstances prophecies were indulged in that the scheme would have no effect, and that nobody would take advantage of it. Consequently it was not all at once that the public began to discover that they really had the means of acquiring clear titles to their estates, and of keeping their titles in a marketable condition; but now the public were becoming acquainted with the benefits of the measure, for whereas from October, 1862, to March, 1864, there were only 65 applications for registration, comprising about 5000 acres of land; from March, 1864, to April, 1865, there had been 216 applications; and it might be concluded that that rate of increase would be progressive. At rather an earlier period the same system was tried in South Australia: and here he must not omit to mention the name of Mr. Torrens, on account of the zeal and ability with which he had promoted the cause of public improvement on this subject. In 1864 an association, with the Duke of Leinster at its head, was formed in Dublin for the purpose of obtaining this necessary supplement to the measure, which had been in successful operation in Ireland; and it was partly by the labours of that association that the Government had been enabled to prepare the present bill. There existed in Ireland a general registry of deeds, but that did not enable persons to keep titles clear. Nevertheless, as the present bill was only per-

missive, those who liked the other system might still use it, have incumbered or uncertain titles, and be unable to deal with their property without running up a very heavy bill with their solicitors. It was provided by the present bill that in all cases in which a parliamentary title was created, that title, if the parties so wished, would at once be placed on the record, together with all subsequent dealings, transfers, &c.; and the record of title was all the public would have to look to. The bill proposed to enlarge in one or two respects the powers of the Landed Estates Court. At present that Court only had power to make a declaration of title in the case of estates in fee-simple, but that power was now proposed to be extended to all estates. In Ireland many leases were virtually perpetual, and there was to be a power for having separate records of these estates on the register. All that was to be done without throwing any new expense on the country. The necessary fees upon the business done would be relied upon to meet any outlay. There were some provisions for recording devises by will, and the succession of heirs in case of intestacy by certain steps to be taken for establishing the title on these different occasions. From the Landed Estates Court appeals would be given to the Court of Chancery in Ireland and the House of Lords.

Mr. Whiteside opposed the bill; it did not provide that the Consolidated Fund should make good all the losses which must necessarily arise from it to the owners of property in Ireland. If such a provision was essential in Australia, as Mr. Torrens informed them, how could it well be dispensed with in Ireland? Under the general registry of estates in Ireland, if the registrar-general made a mistake in giving a certificate, he was liable for damages. There was no provision made in this bill to remedy any error that might be committed. Those to whom the prodigious powers of the bill were given were supposed to be infallible, and there was no remedy against judge, officer, or anybody. The 24th clause enacted, that "on the death of the recorded owner of any real estate, any person claiming as devisee may apply to the judge for a fiat, directing the officer to record the applicant as owner in the place of the deceased person." A person might go with a piece of paper to the judge, and say, "Record me as devisee." If the judge chose to do so, the person recorded as devisee might sell the estate next day, and there was no remedy against the purchaser. The will under which the devisee claimed might have been fraudulently obtained, or the devisee might turn up; but the case had been summarily decided; the estate was gone for ever. But the judge might withhold his fiat "until the applicant shall have obtained an order, or decision, or certificate from her Majesty's Court of Probate in his favour, and shall have lodged in the office the probate or a true copy of the will or codicil under which he claims," &c. Those who framed this clause could have no accurate idea of the law that related to the Probate Court in Ireland. No power was given to the Probate Court to pronounce any opinion on the construction of the will. To refer the matter to him who had no authority to deal with it was an absurdity. He was lately engaged in a case where three wills were produced. Well, the devisee appeared, produced the will, and the estate was gone. The next clause enacted, "On the death of the recorded owner of real estate, any person claiming as heir-at-law may apply to the judge for a fiat, directing the officer to record the applicant. If there shall be any doubt, dispute, or litigation touching the ownership of the estate of a deceased owner, the Court may appoint a person to be recorded in his place as the representative of such estate," &c. It was one of the most critical things to find out who was heir-at-law. Whether there ought not to be a limitation of the time—five years according to some, or ten years according to others—within which, if a will were not produced, it should be concluded that none existed, he would not say; but this question was to be disposed of in no time at all. Once the person was recorded, he could sell the estate. This was a very alarming bill. It could not be acted upon. It was full of mischief to all the interests of society. In their anxiety to be rapid they would become unjust. Under these circumstances, the bill should be referred to a select committee. Lord St. Leonards had expressed a decided dissent from its principles.

Sir G. Bowyer concurred in the observations of the hon. member for Dublin University, and hoped that an opportunity would be afforded for further inquiry.

Sir *H. Cairns* said, the bill before it came to them had been perfectly well understood out of doors, because he never remembered a piece of law reform which had excited so much attention from men of all classes—landed proprietors and mercantile men—as this. They had seen what advantages had been secured by measures of this kind in our colonies, and with what facility it could be worked. The fact that the bill was merely permissive disposed of many of the objections to it. The objections to the bill emanated from those who wanted to conjure up terrors to defeat a bill which they imagined—he thought unwisely—would interfere with their own interests. To send the bill to a select committee would be to prevent it from passing during the present session, and he, therefore, hoped hon. members would decide upon considering it in a committee of the whole House.

Mr. *Malins* did not think there was the least analogy between the case of the transfer of land and that of the transfer of stock, or the transfer of a ship; though he had heard the present Lord Chancellor say he hoped to see the transfer of land made as simple as that of stock. Till they resolved that land should be transferred without any regard to equitable titles, they could never make its transfer a simple one. He did not offer any opposition to the bill. It was a recommendation to the measure that it was only permissive, and if the gentlemen of Ireland were anxious for it, let them have it; but let them not suppose that the bill would do away with all the difficulties connected with the transfer of land. On the contrary, he believed those difficulties would speedily become as complicated under this bill as they were under the present system, if not more so.

Mr. *Cogan* approved of the bill.

Mr. *Longfield* advocated the second reading of the bill, although he did not anticipate that much good would result from it.

Mr. *Murphy* disclaimed, on the part of the body of solicitors, any opposition to any measure properly calculated for the development of the landed interest of the country. He did not think that the present bill would afford much better provision than the laws of the country already provided; but as it was the wish of the country that it should be passed, he should support the second reading.

The bill was then read a second time.

#### COUNTY COURTS EQUITABLE JURISDICTION BILL.

On the motion for the second reading of this bill,

Mr. *Craufurd* objected to the mode in which the county court judges had been treated. Their work had constantly been increased, and would receive still further additions by this bill. It was true that an addition to their salaries was proposed in the present measure, but it took the objectionable form of fees, instead of a fixed salary; and as the superannuation allowances for county court judges were determined on the amounts of their fixed salaries, there appeared to be, as far as he could see, no provision for any increase in their superannuations.

Sir *F. Kelly* said, this bill would effect a greater improvement in that branch of the administration of justice which more immediately concerned the labouring and many of the middle classes than any measure which had for a long time been brought before the House. At the same time he agreed with what had been said as to the insufficiency of the remuneration of county court judges, and he hoped that a sufficient interval would be allowed before the bill went into committee to enable the House to receive returns upon which might be framed amendments to the system of paying the county court judges an additional remuneration out of fees, which, as proposed by this bill, appeared to him to be the worst that the wit of man could have devised. If no other member proposed such amendments, he should himself give notice of them, and he therefore hoped that the House would not be asked to go into committee until after Whitsuntide.

Mr. *Hibbert* did not oppose the second reading of the bill, but objected to the 13th clause. As the clause was originally framed, the judges were not to receive additions which would raise their salaries to more than 1600*l.* a year, while, as it now stood, the additions were not to exceed 300*l.* a year; so that the salaries of those judges who now received 1500*l.* a year might be raised to 1800*l.* He also objected to the equal distribution of the fees among all the judges, so that the judge of an agricultural district, upon whom comparatively little extra labour might be imposed by this bill, would

receive as great an addition to his salary as would the judge of one of the populous districts in Lancashire, upon whom it might impose a very large amount of extra work.

Mr. *Malins* entertained considerable fears as to its working, and gave doubts as to the expediency of having a number of small Courts of Chancery all over the country. It was most important that the county court judges should not be overloaded with work, because, if they were, the whole system would break down. At present they could only try actions at law up to 50*l.*, and why their jurisdiction in equity should be extended to 500*l.* he could not understand. There were two reasons for the existing limitations—one, that the courts were not of so high a character that they ought to decide questions of great importance, and the other, that it was necessary that they should deal only with such cases as could be easily and speedily disposed of. By this bill it was proposed to give them jurisdiction in all matters of foreclosure and redemption, enforcing liens or charges upon land, and bills for specific performance, without saying anything as to the pleadings to be adopted, or the modes of trial to be followed. These classes of cases, especially those for specific performance, were difficult and often lengthy, and he was afraid, that if they were to be tried in the county courts by judges who were often only a single day in one place, they might interfere with the arrangement of accounts and break down the whole system.

Mr. *Ayrton* was of opinion that, if the bill were to become law, it would be necessary to consider the position of the registrars of county courts, with the view of securing that they should possess some legal qualification. In answer to the argument of the hon. and learned member for Suffolk, who had laid it down as a doctrine to be universally adopted, that persons ought not to pay fees who had recourse to a court of justice, he would observe, that he entirely dissented from that view, and that when the county courts were first established, a pledge was given that the fees should be commensurate with the whole expense of those courts.

Sir *F. Kelly* said the hon. and learned gentleman had misunderstood him if he thought he objected to the imposition of fees. What he had stated on the subject was, that the scale of fees laid down in the bill was not one which ought to be adopted.

Mr. *Whiteside* wished to know whether any attempt would be made to establish a scale of fees, as had been suggested by Lord St. Leonards in another place, for cases of small value in the Court of Chancery.

The Attorney-General, in reply to the remarks which had been made by the hon. and learned member for Wallingford in reference to specific performance, said it must be borne in mind that the principle on which county courts were established at all was, that it was better to administer rough justice than none, and to have questions settled as far as possible without having the property involved eaten up. As to the regulations which should be laid down, he had no doubt that as many forms as were found to be necessary would be adopted. On the question of payment he might observe, that the principle of equality was that on which the bill proceeded, and that the representations made on the subject should receive the fullest consideration.

The bill was then read a second time.

The Railway Clauses Bill was read a second time.

The House went into committee on the Inns of Court Bill pro forma, amendments were made, and it was ordered to be recommitted.

The Ecclesiastical Leasing Act (1858) Amendment Bill and Publichouse Closing Act (1864) Amendment Bill were read a third time, and passed.

Tuesday, May 30.

On the motion of Colonel *Wilson Patten*, a select committee was appointed to inquire into the operation of the Court of Referees on Private Bills.

#### BANKRUPTCY.

Mr. *Maffatt*, in rising to call attention to the report of the select committee on the Bankruptcy Act of 1861, and the existing state of the laws in regard to debtor and creditor, said, that on the former occasion on which this subject was before the House, when the discussion came to a somewhat untimely end, he shewed, by documents which were before the House, the existence of a state of things which fully warranted the complaints which were made on all sides. The

state of things previous to the passing of the act of 1860 was bad enough, but he believed that there was no man who would not gladly return to it rather than maintain the existing law. In the three years previous to 1860 the number of bankruptcies was about 1200 a year, the debts proved were 5,100,000*l.*, and the moneys collected 1,300,000*l.*—a sum equivalent to about 5*s.* in the pound, but which, it was true, was diminished by official charges and by misappropriations, which were described by Sir R. Bethell when in the present Parliament he exposed the “scandal and abomination,” as he termed it, of the act then in force. Under the act now in force, the number of bankruptcies had risen from 1200 to nearly 7500 annually, and in from 5000 to 6000 of these cases the insolvents were allowed to escape without paying any dividend, and the cost of whitewashing them was paid by the State. The first point with creditors always was to avoid an appeal to the Bankruptcy Court; and this indisposition to resort to that court became an engine in the hands of the debtor for the dictation of the terms upon which he would compound his debts. The result was, that there had sprung into existence a system so tinged with fraud that it might fairly be termed a fraudulent system. When a man found it convenient to stop payment he placed his affairs in the hands of an accountant or solicitor, who prepared a circular, which he signed, informing his creditors of the circumstance, and referring them to these gentlemen for further particulars. Attorneys and accountants were generally honourable men, who would not knowingly make a false statement, but they took exactly what they found upon the insolvent's books, and from them prepared a statement which they laid before the creditors. It was impossible to get any creditor to investigate these accounts merely that he might obtain a large dividend for himself and sixty or seventy other creditors; and the consequence was, that the greatest facilities were afforded for fraudulent insolvencies. Last week insolvencies were announced in the public papers to the amount of 5,500,000*l.*, and of none of these would anything be heard again. They would commence with a promise to pay 10*s.* or 15*s.* in the pound, which would gradually dwindle down to 2*s.*, 3*s.*, or 4*s.* in the pound. The explanation of that was to be found in the existing state of the law. A committee of that House had inquired into the law, and had recommended the abolition of the machinery of the present bankruptcy system, and the substitution of a system somewhat similar to that which now existed in Scotland, placing the affairs of the insolvent very much in the hands of the creditors, and giving them a machinery by which the estate could be worked up without the delays that had resulted from the joint action of the official and creditors' assignees. It had also recommended the abolition of arrest for debt, and the curtailing of the facilities which insolvents now enjoyed for obtaining certificates. He desired to know whether the Government intended to adopt the recommendations of the committee, and to adopt measures for the remedy of a state of affairs which was injurious to mercantile interests, and discreditable to the Legislature of the country. The hon. gentleman concluded by moving, that, in the opinion of this House, the report of the select committee on the Bankruptcy Act of 1861 deserves the prompt and serious consideration of her Majesty's Government.

Mr. Ayrton, in seconding the motion, said that on a more favourable occasion he should have felt it his duty to present to the House, fully and completely, the resolutions at which the committee upon this subject had arrived; but as his hon. friend had now been almost as unfortunate in his selection of a night as he was when the matter was last before the House, he would confine himself to the statement, that the changes proposed by those resolutions were of so fundamental a character, and would so affect almost every section of the statute now in force, that it would be impossible to carry them into effect by any mere amending act, and that it would be necessary to give effect to the concluding resolution, and introduce an independent bill for the amendment and consolidation of the law. It could scarcely be expected that the Government would, during the short time which remained of the present session, pass any comprehensive measure on the subject; but he hoped the Attorney-General would be able to assure the House that it would receive their serious consideration, with a view to legislation when the new Parliament met. Meantime, he had great pleasure in seconding the motion of his hon. friend.

Mr. Bass thanked the hon. member for Honiton for the constancy which he had displayed in bringing the state of our bankruptcy law under the notice of the House. The question was one which was at the present moment of the greatest interest to the mercantile community. Of course it would be impossible to carry a bill with respect to it in the present session; but then the Lord Chancellor, who was as familiar with the subject as with his morning and evening prayers, might without the slightest effort produce a measure which might be laid on the table of the House before the dissolution, and considered by the country during the recess. He hoped, he might add, that the Attorney-General would, before the session came to a close, make some explanation to the House as to the principle on which, in his opinion, the Government ought to act in effecting any alteration in the existing bankruptcy system.

Mr. Beecroft believed that hon. gentlemen on both sides of the House agreed that the present law of bankruptcy was most unsatisfactory. In the session of 1860 the Government introduced a comprehensive measure for the reform of the law of bankruptcy. Its principle met with general approval, but though opposed by no one it did not reach the Upper House. When the House met the year after, they were all disappointed when they found that the Consolidated Bill was abandoned, and a sort of patchwork Amendment Bill substituted for it. No course could be taken more likely to lead to confusion and difference of decision, and he heard from those engaged in the administration of it that the law was thrown into such a state of inextricable confusion, that some parts of it were really rendered very difficult of interpretation. A very strong feeling of dissatisfaction generally prevailed, and a thorough change in the entire system was loudly called for; the Leeds Chamber of Commerce was against any attempt merely to amend the law, or any change which would leave the winding up of insolvent estates in the hands of any court or body of officials whatever, and was as decidedly in favour of leaving such winding up in the hands of the creditors. No change would be satisfactory, or prevent further agitation of the question, which did not altogether take out of the hands of officials the winding up of bankrupt estates, and transfer it to the creditors themselves, as was the case in Scotland. In fact, what the Leeds Chamber of Commerce really wanted was, the insolvent in the court and the estate out of court.

The Attorney-General said, the Government would undoubtedly recognise the duty of taking into prompt and serious consideration the report of the select committee on the Bankruptcy Acts. The committee were quite agreed in the opinion that it was desirable no longer to attempt to patch up a system which had been found not to answer, but that there should be a serious endeavour made to revise, as far as possible, both its principle and its details, and to place them on such a footing as would afford some reasonable ground that we should understand the system on which we were going to proceed in future, and start with a favourable expectation of its success. The committee had recommended substantially that for which the hon. member for Leeds contended for, with regard to the taking the winding up of insolvent estates out of the hands of the Court, while they had also made the important recommendation that imprisonment for debt should be abolished, but that the discharge given to a bankrupt or insolvent debtor should not at once operate, except on the payment of a dividend of a certain amount. These were material alterations, and he mentioned them on the present occasion, not for the purpose of entering into a vindication of their merits, but in order that the attention of the public out of doors might be directed to their consideration. If Parliament were to do anything useful, as he hoped it would in a future session, it must proceed on the two grounds, of endeavouring to consolidate the whole law, and of securing the support of public opinion as to those important principles which it was proposed to introduce, for the first time, into the new system. It was indispensably necessary that the Government, in dealing with the subject, should be in the possession of the views of the mercantile community upon it, because it would be useless to endeavour to carry a measure which failed to commend itself to their approval. He trusted, therefore, that before the House met again after the recess the attention of mercantile men would be carefully directed to the report of the committee, and that there would be a very general expression of opinion upon the question.

Mr. *Göschel* was sure the House must have received the remarks which had fallen from the Attorney-General with great satisfaction. He felt convinced that the challenge which had been thrown out by the hon. and learned gentleman would be accepted by the mercantile community, and that the subject would be very generally discussed by the chambers of commerce throughout the country. There was not a dissentient voice as to the necessity of entirely recasting our present bankruptcy system by means of a sweeping change, which would altogether remove a state of things which was most disgraceful to our legislation.

The motion was then agreed to.

#### LUNACY LAW.

Mr. *Neate* rose to call the attention of the House to some defects in the law relating to lunatics, both with respect to the administration of that law and its provisions, and to move an address for copy of any returns now in possession of Government as to English subjects now in confinement in lunatic asylums abroad. The hon. gentleman said the subject was one which had very recently been prominently brought under public notice, in consequence of the case of Mary Ryan, who had been forcibly removed from this country. The hon. member was proceeding to suggest that persons connected with conventual establishments in this country would do well, instead of removing their insane to Belgium, to provide an asylum here, to which they might be removed, and which would be subject to the control of the authorised Board, when the House was counted out.

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# THE JURIST.

LONDON, JUNE 10, 1865.

THE complications arising out of the arrangement clauses in the Bankruptcy Act, 1861, seem to be endless, the curious results quite un contemplated, the inability of the Courts to deal with them so as to effect the ends of justice, simplicity of proceeding, and what may possibly have been the intention of the framers, laughable, if the matter were not so serious. The Courts confess themselves unable to understand the provisions of the act as to these deeds; their decisions, therefore, have had no uniformity; sometimes their reasonings in different cases have more or less trenched on, or been inconsistent with, each other; sometimes their decisions have been actually irreconcilable. A slight sketch of the most important features of this subject may be instructive.

Sect. 192 provides, that every instrument entered into between a debtor and his creditors, or a trustee for them, as to his debts and liabilities, his release therefrom, or the distribution, &c. of his estate, shall be as valid and effectual against his creditors as if they had executed, if the following conditions are observed—first, a majority of three-fourths in value of the creditors for above 10l. shall in writing assent; secondly, if trustees be appointed, they must execute it; thirdly, the execution must be attested by a solicitor; fourthly, within twenty-eight days of execution it must be left with the registrar; fifthly, a certain specified affidavit delivered with it; sixthly, an ad valorem stamp shall be affixed; and, seventhly, on execution, all property comprised in it shall be given to the trustees. As to the first, the Lords Justices decided in *Ex parte Godden* (1 De G., J., & S. 260), that the secured creditors were comprised, although it is obvious that they may very easily be got to assent, though the deed may be a disadvantageous one. In *Ex parte Syer* (1 De G., J., & S. 318), the Lord Chancellor said that secured creditors ranked for the amounts due, after deducting their securities. But the Court of Common Pleas, in *Turquand v. Moss* (33 L. J., C. P., 354), followed the Lords Justices. And debts, though disputed, must be taken into account. (*Ex parte Middleton*, 33 L. J., Bank., 36). As to the second, it has been held that there need not be trustees, in order to make the deed binding on non-executing creditors. (*Deahurst v. Jones*, 33 L. J., Ex., 294). As to the fourth, the Lord Chancellor in *Re Skinner* (34 L. J., Bank., 9), allowed a trust deed to be registered, under sect. 194, in accordance with the decision in *Wishart v. Fowler* (33 L. J., Q. B., 125), but expressed an opinion that the Court had no jurisdiction to extend the time given by this clause in sect. 192. It has been laid down in several cases, beginning with *Ex parte Rawlings* (32 L. J., Bank., 27), that no *cessio bonorum* is necessary. The common-law courts, early in this business, laid down that, in order to be valid, the conditions must be reasonable, and a lamentable array of cases, too long to mention, is devoted to the question, of whether particular deeds

are reasonable or not. Again: several cases have decided, that in order to make even a valid deed pleadable in bar in an action, there must be a release, or a provision that it may be so pleadable; but this does not interfere with the law of tender, so that if there be a tender of the agreed composition, this will be the subject of a good plea. (*Fessard v. Mugnier*, 34 L. J., C. P., 125; *Garrod v. Simpson*, Id., Ex., 70).

Sect. 193 calls for no remark; it merely provides for the method of registration by the registrar.

Sect. 194 provides, that every agreement by which the debtor conveys any of his property for his creditors, or makes an arrangement for the distribution, &c. of his estate, or his release from liabilities, shall be registered within twenty-eight days after execution, or within such further time as the Bankruptcy Court in London may allow, or shall not be receivable in evidence.

"This section was introduced," says the Lord Chancellor, in *Ex parte Morgan* (32 L. J., Bank., 15), "with a double view, first, because it was apprehended that many deeds of composition might still be made which would not be brought under sect. 192, and which might have an injurious effect by reason of there being secret deeds of arrangement. The obligation was, therefore, imposed upon all persons executing such a deed of bringing it within twenty-eight days, and a penalty attached in case of default that it shall not be receivable in evidence. Another object was this, it was thought that many deeds of composition might not be perfected in the manner required by sect. 192 within twenty-eight days, yet the creditors might be willing to accede to it; therefore, power is given under sect. 194 to register a deed which did not comply with the requirements of sect. 192. These two forms of registration being very different, the consequences of one form do not attach to the other. The consequence of an observance in every respect of the terms of sect. 192 is, that the deed is binding on the minority who do not execute it. No such consequence attaches to registration under sect. 194."

This section applies to every deed purporting on its face to be such a deed as is mentioned by the section (*Hodgson v. Wightman*, 32 L. J., Exch., 147); and the leave of the Court may be given after the twenty-eight days have elapsed. (*Wishart v. Fowler*, 33 L. J., Q. B., 125).

Sects. 195 and 196 are unimportant, being merely as to stamps and certain indorsements.

But sect. 197 is as important as it is difficult thoroughly to understand. It provides, that after registration the debtor, creditors, and trustees, either parties to, assenting to, or bound by, the deed, shall, in all matters relating to the estate and effects of the debtor, be subject to the Court of Bankruptcy, and have the benefit of, and be liable to, the Act, just as if the debtor had been adjudged bankrupt, the creditors had proved, and the trustees become creditors' assignees; and the trustees and the creditors shall, as between themselves, and as between themselves and the debtor, and as against third parties, have the same powers, rights, and remedies with respect to the debtor, his estate and effects, and the collection and recovery of the same, as are preserved by the assignees and creditors with respect to the bankrupt or his acts, estate, and effects in bankruptcy; and, except otherwise provided by the deed, the Court shall decide all questions on it by the

bankrupt law as far as possible, and have power to make orders, &c., as if the debtor were a bankrupt. This section "mainly relates to deeds under sect. 192" (per Lord Chancellor in *Ex parte Morgan*), but applies also to deeds under sect. 194. As far as the Bankruptcy Courts are concerned, this section seems to put the debtor, creditors, and trustees (if there be any), as between themselves and as against third parties, in the same position as if there had been a bankruptcy, except in so far as the deed provides otherwise (*Hodgson v. Wightman*); so that, for instance, a trustee or a creditor, bound by a deed under sect. 192, can examine the debtor. (*Ex parte Alexander*, 32 L. J., Bank, 55; *Ex parte Brooks*, 33 L. J., Bank, 41). The full effect of the section, however, even as respects proceedings in that court, is not very clear; for instance, the possibly different effects arising where there are trustees and where there are not, seem difficult to foresee; and it is utterly impossible to say with certainty what the effects as to third parties are, the words relating to them being simply "as against third persons." And as to the effect on actions at law in the absence of decisions, we can hardly venture on an opinion. The only case which has come under our notice is the case of *Topping v. Keysell* (33 L. J., C. P., 225). In that case there was a conveyance of the property to trustees; and the Court held that, as the peculiar circumstances of the case and frame of the deed shewed that it was intended that the trustees should have the same rights as in bankruptcy, there was a relation back, so as to entitle them to bring trover against a man claiming under a bill of sale previous to the deed. The Court, however, carefully restricted themselves to the particular case, and said that they refrained from giving any opinion as to the general effects of sect. 197; and it should be observed that the defendant was one of the creditors of the arranging debtor. What, therefore, will be the effects of this section in the different cases, of there being trustees, of there being none, of there being an assignment of property, of there being none, and of a defendant being a creditor, or not being so, is almost beyond speculation.

Sect. 198 provides, that after notice of the filing and registration of such a deed, no process against the debtor's person or property, except a "ne exeat regno," shall be available without leave of the Court; and a certificate shall be as available as a protection in bankruptcy. This section applies to deeds registered after as well as before execution (*Baerelman v. Longlands*, 34 L. J., Ex., 3); but it applies only to deeds under sect. 192 (per Lord Chancellor, *Ex parte Morgan*); and the deed must be a valid one (*Uderton v. Jewell*, 16 C. B., N. S., 142); and the Court to give leave has been decided to be the Court of Bankruptcy. Two curious points have lately been raised on this section—first, if the deed contains a release which the debtor might have pleaded in an action, how far does such neglect prevent him from availing himself of this section if execution be issued against him? secondly, if the sheriff be presented with a certificate by the debtor, and discharge him, but the deed be in fact invalid, is the sheriff liable for an escape? With respect to the first point, in *Whitmore v. Wakerley* (34 L. J., Ex., 83) such a debtor was arrested, and an application was made to the Court of Exchequer under this section, and the point being raised, that having neglected to plead a release contained in the deed, the debtor was not entitled now to have benefit of it, they discharged the rule; but in a later case, of *Hartley v. Mace* (not yet reported, in the Common Pleas), in which execution having been issued against the debtor's goods, and money paid into court under an interpleader, an application was made to the Court to pay it out to the

execution creditor, and *Whitmore v. Wakerley* was cited, the Court said the report of that case was not clear on the point, but they construed it to mean, that the application was to set aside the execution, and, so distinguishing it, said the meaning of the section was, that the plaintiff might proceed up to execution, but he could not avail himself of it, that the execution was to stand, but if he or his goods were taken, he was entitled to the benefit of the section. As to the second point, the Court of Queen's Bench, in *Lloyd v. Harrison* (34 L. J., Q. B., 97), differed, and the majority decided that the sheriff was not liable. It is also worth consideration, what is the meaning of no process "in respect of any debt."

Sect. 149 provides, that the Court may stay a petition in bankruptcy after execution of a deed of arrangement, and when registered shall dismiss it.

And sect. 200 provides for the case of creditors being abroad, and allows the consent of the majority in England to suffice under certain conditions; on which section we will only observe, that it seems to make it necessary to have trustees.

A vast number of other cases have been decided on these sections, but the above are the most important for the purpose of shewing the general effect of these provisions; and we may conclude this slight sketch (slight from the small space we can afford) by referring our readers to the judgment of the Lord Chancellor, in *Ex parte Morgan*, for a terse and authoritative exposition of the subject, as far as it goes.

#### GENERAL ORDER OF THE HIGH COURT OF CHANCERY,

*As to the Mode of Proceeding for the Proof of Debts.*  
Saturday, May 27, 1865.

THE Right Honourable RICHARD BARON WESTBURY, Lord High Chancellor of Great Britain, with the advice and consent of the Right Honourable Sir JOHN ROMILLY, Master of the Rolls, the Honourable the Vice-Chancellor, Sir RICHARD TORIN KINDERSLEY, the Honourable the Vice-Chancellor, Sir JOHN STUART, and the Honourable the Vice-Chancellor, Sir WILLIAM PAGE WOOD, doth hereby, in pursuance and execution of the powers given by the stat. 13 & 14 Vict. c. 35, and the 15 & 16 Vict. c. 80, and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

1. Every advertisement for creditors affecting the estate of a deceased person, which shall be issued pursuant to any decree or order, shall direct every creditor, by a time to be thereby limited, to send to the executor or administrator of the deceased, or to such other party as the judge shall direct, or to his solicitor, to be named and described in such advertisement, the name and address of such creditor, and the full particulars of his claim, and a statement of his account, and the nature of the security (if any) held by him; and such advertisement shall be in the form numbered 1 in the second Schedule hereto, with such variations as the circumstances of the case may require; and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

2. No creditor need make any affidavit nor attend in support of his claim (except to produce his security), unless he is served with a notice requiring him so to do, as hereinafter provided.

3. Every creditor shall produce the security (if any) held by him, before the judge, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required by notice in writing,

to be given by the executor or administrator of the deceased, or by such other party as the judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the judge, at his chambers, at such time as shall be specified in such notice.

4. In case any creditor shall neglect or refuse to comply with the preceding rule numbered 3, he shall not be allowed any costs of proving his claim, unless the judge shall otherwise direct.

5. The executor or administrator of the deceased, or such other party as the judge shall direct, shall examine the claims sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable; and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit, to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor, or other competent person, or otherwise as the judge shall direct, verifying a list of the claims, the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

6. In case the judge shall think fit so to direct, the making of the affidavit referred to in the preceding rule numbered 5, shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the judge may give.

7. At the time appointed for adjudicating upon the claims, or at any adjournment thereof, the judge may, in his discretion, allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto, as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

8. Notice shall be given by the executor or administrator, or such other party as the judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the judge shall direct, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

9. Any creditor who has not before sent in the particulars of his claim pursuant to the advertisement, may do so four clear days previous to any day to which the adjudication is adjourned.

10. After the time fixed by the advertisement, no claim shall be received (except as before provided in case of an adjournment), unless the judge shall think fit to give special leave upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the judge shall direct.

11. The rules numbered 37, 38, 41, 42, and 43, of the 35th Consolidated General Order, are hereby abrogated, in so far only as the same relate to creditors.

12. Where any decree or order is made for payments by the Accountant-General to creditors, the

party whose duty it is to prosecute such decree or order shall send to each such creditor, or his solicitor (if any), a notice that the cheques may be received from the Accountant-General; and such party shall, when required, produce such decree or order, and any other papers necessary to enable such creditors to receive their cheques and get them passed.

13. Every notice by this Order required to be given shall, unless the judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post, prepaid, to the creditor to be served, according to the address given by such creditor in the claim sent in by him pursuant to the advertisement, or, in case such creditor shall have employed a solicitor, to such solicitor, according to the address given by him.

14. Solicitors shall be entitled to charge and be allowed the fees set forth and referred to in the first schedule to this Order, for business done under this Order.

15. The forms set forth or referred to in the second schedule to this Order, with such variations as the circumstances of each case shall require, shall be adopted for the respective purposes therein mentioned.

16. This Order shall come into operation on and after the 15th June, 1865; and the general interpretation clause in the Consolidated General Orders shall be deemed to extend to this Order; and the word "creditor" used in this Order, and in the forms subjoined hereto, shall include a person claiming any debt or liability affecting the personal estate of a deceased person, under any order made pursuant to the stat. 13 & 14 Vict. c. 35.

WESTBURY, C.  
JOHN ROMILLY, M. R.  
RICHD. T. KINDERSLEY, V. C.  
JOHN STUART, V. C.  
W. P. WOOD, V. C.

# THE FIRST SCHEDULE.

## Fees and Charges to be allowed to Solicitors.

	Lower Scale.		Higher Scale.	
For every notice which may be sent by the post, including the sending ..	£0	2 6 ..	0	2 6
For every other notice, including the service .. .. .	0	5 0 ..	0	5 0
For attendances on the Accountant-General to bespeak all cheques for sums payable to creditors under any decree or order .. ..	0	6 8 ..	0	13 4
For all other attendances on the Accountant-General and Registrar, to produce papers necessary to enable all creditors to receive their cheques under any decree or order, and get them passed .. .. .	0	6 8 ..	0	13 4
And if the number of such cheques exceeds two, for every additional number not exceeding two ..	0	6 8 ..	0	6 8
Except that the last-mentioned fees shall not in any case (unless the Taxing Master shall in his discretion think fit, under special circumstances, to allow a larger amount) exceed .. .. .	3	3 0 ..	5	5 0
For all other business, the same fees and allowances as are authorised by the 2nd rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, and, by the practice of the Court, for business of a similar nature, except the special fees applicable to creditors coming in under the rules of the 35th of the Consolidated General Orders, which are abrogated by this Order.				

THE SECOND SCHEDULE.  
FORMS.

No. 1.—*Advertisement for Creditors.* [Rule 1.]

Pursuant to a decree [or, an order] of the High Court of Chancery, made in [the matter of the estate of A. B., and in] a cause, S. against P., the creditors of A. B., late of —, in the county of —, who died in or about the month of —, 18—, are, on or before the — day of —, 18—, to send, by post, prepaid, to E. F., of —, the solicitor of the defendant C. D., the executor [or, administrator] of the deceased [or as may be directed], their Christian and surnames, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or, in default thereof, they will be peremptorily excluded from the benefit of the said decree [or, order]. Every creditor holding any security is to produce the same before the Master of the Rolls [or, Vice-Chancellor —], at his chambers, situated at &c., on the — day of —, 18—, at — o'clock in the — noon, being the time appointed for adjudicating on the claims.

Dated this — day of —, 18—. G. H., Chief Clerk.

No. 2.—*Notice to Creditor to produce Documents.*  
[Rule 3.]  
(Short Title).

You are hereby required to produce, in support of the claim sent in by you against the estate of A. B., deceased [describe any probate, administration, deed, or document required], before the Master of the Rolls [or, Vice-Chancellor —], at his chambers, situate at &c., on the — day of —, 18—, at — o'clock in the — noon.

Dated this — day of —, 18—. G. B., of &c., solicitor for the plaintiff [or, defendant, or as may be.]

To Mr. S. T.

No. 3.—*Affidavit of Executor or Administrator as to Claims.* [Rule 5.]  
In Chancery.  
(Title).

We, C. D., of &c., the above-named plaintiff [or, defendant, or as may be], the executor [or, administrator], of A. B., late of —, in the county of —, deceased, and E. F., of &c., solicitor, severally make oath, and say as follows:—

I, the said E. F., for myself, say as follows:—

1. I have, in the paper writing now produced and shewn to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the — day of —, 18—.

And I, the said C. D., for myself, say as follows:—

2. I have examined the particulars of the several claims mentioned in the paper writing now produced and shewn to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. [or as may be, and state any other inquiries or investigations made], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable

3. From such examination [and state any other reasons], I am of opinion, and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing marked A.; and to the best of my

knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing marked A., and that the same ought not to be allowed without proof by the respective claimants [or, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidences.]

Sworn, &c.

No. 4.—*Exhibit referred to in Affidavit, No. 3.*

A.  
(Short Title).

List of claims the particulars of which have been sent into E. F., the solicitor of the plaintiff [or, defendant, or as may be], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the — of —, 18—.

This paper writing, marked A., was produced and shewn to —, and is the same as is referred to in his affidavit, sworn before me this — day of —, 18—.

W. B., &c.

First Part.—Claims proper to be allowed without further Evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ s. d.	£ s. d.

Second Part.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

No. 5.—*Notice to Creditor to prove his Claim.* [Rule 8.]  
(Short Title).

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me, on or before the — day of — next; and to attend, by your solicitor, at the chambers of the Master of the Rolls [or, Vice-Chancellor —], situate at &c., on the — day of —, 18—, at — o'clock in the — noon, being the time appointed for adjudicating on the claim.

Dated this — day of —, 18—.

G. B., of &c., solicitor for the plaintiff [or, defendant, or as may be.]

To Mr. S. T.

No. 6.—*Notice to Creditor of Allowance of Claim.*

[Rule 8.] (*Short Title.*)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of £—, with interest thereon at £— per cent. per annum, from the — day of —, 18—, and £— for costs.

If *part only allowed*, add—If you claim to have a larger sum allowed, you are hereby required to prove much further claim, and you are to file [*etc., as in Form No. 5.*]

Dated this — day of —, 18—.

G. R., of &c., solicitor for the plaintiff  
[or, defendant, or as may be.]

To Mr. P. R.

No. 7.—*Notes that Cheques may be received.* [Rule 12.]

(*Short Title.*)

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this [matter and] cause, dated the — day of —, 18—, may be received at the Accountant-General's Office on and after the — day of —, 18—.

G. R., of &c., solicitor for the plaintiff  
[or, defendant, or as may be.]

To Mr. W. S.,  
&c.

WESTBURY, C.  
JOHN BOMILLY, M. R.  
RICHD. T. KINDERSLEY, V. C.  
JOHN STUART, V. C.  
W. P. WOOD, V. C.

GENERAL EXAMINATION OF STUDENTS.

TRINITY TERM, 1865.

At the General Examination of Students of the Inns of Court, held at Lincoln's Inn Hall, on the 22nd, 23rd, and 24th May, 1865, the Council of Legal Education have awarded to—

John Naish, Esq., student of Lincoln's Inn, a studentship of fifty guineas per annum, to continue for a period of three years.

William Thomas Charley, Esq., student of the Inner Temple, an exhibition of twenty-five guineas per annum, to continue for a period of three years.

Matthew Ingle Joyce, Esq., student of Lincoln's Inn; Chaloner William Chute, Esq., student of the Middle Temple; and Reginald Montague Auber Branson, Esq., student of the Middle Temple, certificates of honour of the first class.

John Henry De Villiers, Esq., student of the Inner Temple; John Matthias Spread, Esq., student of Lincoln's Inn; Edward Cooper Willis, Esq., student of the Inner Temple; John Finlaison, Esq., student of Lincoln's Inn; Arthur William Trollope Daniel, Esq., student of Lincoln's Inn; John Watton Teevan, Esq., student of the Middle Temple; David Lindsay Macafee, Esq., student of the Middle Temple; Thomas Snow, Esq., student of the Inner Temple; De Grouchy Le Gallais, Esq., student of Lincoln's Inn; James Hallet, Esq., student of the Inner Temple; George Clement Bertram, Esq., student of the Inner Temple; Theodore Thomas, Esq., student of the Middle Temple; Henry James Burford Hancock, Esq., student of the Inner Temple; and Hugh Flamsteed Pigot, Esq., student of the Inner Temple, certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) WESTBURY, C., Chairman.

Council Chamber, Lincoln's Inn,  
June 1, 1865.

Imperial Parliament.

HOUSE OF COMMONS.—*Thursday, June 1.*

RECORD OF TITLE (IRELAND) BILL.

On the motion for going into committee on this bill, Mr. *Whitcliffe* hoped the Attorney-General would consent to postpone going into committee on so complicated a subject at that late hour (ten minutes past 12). He would suggest that all persons who had a parliamentary title should be allowed to renew that title every five years; and also that, instead of adding another system of registration to the two already existing in Ireland, there should be but one system, and that the entire business of registration should be conducted in one office.

Mr. *Monseil* hoped that the Attorney-General would not accede to the proposition of the right hon. gentleman opposite. Delay at that period of the session would be fatal to the bill, and he, therefore, trusted they would go into committee, and make some progress that night.

Mr. *Scully* also hoped that the right hon. member for Dublin University would withdraw his opposition to the measure and allow it to pass that session in spite of all its defects. For himself, as far as a register of title was concerned, he was in favour of the bill; but as far as a register of deeds was concerned he was against it.

The *O'Conor Don* expressed a hope that the Attorney-General would not consent to the proposal of the right hon. member for Dublin University.

The *Attorney-General* said that the bill was generally desired by the landed gentry of Ireland, and he thought it advisable that the House should now make whatever progress was possible with the measure.

After some observations from Mr. *Murphy*, Mr. *Hassard* said, there would be many difficulties in the way of carrying this bill into operation. Anything which it would effect could be done under the existing law; and if any change was to be made, it ought to be made by a comprehensive measure.

Sir *H. Cairns* observed, that the objections raised in the course of this discussion had much better be dealt with in committee.

Mr. *George* was of opinion that the bill was altogether illusory, and would not effect what its promoters seemed to expect from it.

Mr. *Malins* concurred in the opinion that the bill would be altogether illusory, but recommended that the House should be allowed to go into committee upon it.

The speaker left the chair, and the House went into committee.

The first five clauses of the bill were agreed to, with amendments, and the chairman was ordered to report progress.

COURTS OF JUSTICE BUILDING BILL.

The *Attorney-General* moved the House disagree with the amendment of the House of Lords to this bill. The House would be aware that it was proposed that the Treasury should contribute the sum of 200,000*l.* towards the erection of the new courts of justice, in consideration of the rents of certain buildings which would be placed at the disposal of the Government when those courts were finished. Among those buildings was the one in Southampton-buildings, formerly occupied by the Masters' offices, belonging to the Court of Chancery. That building had been erected out of the very fund from which the 1,000,000*l.* was to be taken towards building the new courts of justice, and he could not see why the House of Lords should object to the proposed arrangement.

The motion for disagreeing with the Lords' amendment was then agreed to.

COURTS OF JUSTICE CONCENTRATION (SITE) BILL.

On the consideration of the Lords' amendment to this bill, The *Attorney-General* said the House of Lords had prepared an amendment to this Bill, to the effect that no land should be purchased for the erection of the new courts of justice until a determination had been come to relative to securing land to make proper approaches to that building. That was a subject for a new act of Parliament, and it ought not to be permitted to put a stop to the present bill. After

consulting with those best acquainted with the subject, he proposed that the amendment of the Lords should be modified, so that no proceedings should be taken until a certificate in writing shall have been received by the Commissioners of her Majesty's Treasury, signed by the major part in number of the persons appointed by her Majesty, under the Courts of Justice Building Act, 1865, to advise and concur with the Commissioners of her Majesty's Treasury, with reference to the plan and arrangements of the buildings to be erected upon the lands hereby authorised to be taken, stating that they are satisfied that the lands to be acquired under this act, of which a plan has been laid before Parliament, are sufficient for all the purposes of the intended new courts and buildings connected therewith; and that the probable cost of the said lands and buildings will not exceed the amount of the funds provided under the Courts of Justice Building Act, 1865, for those purposes.

Mr. *Selwyn* thought the amendment of the House of Lords had introduced into the bill a wise precaution against the looseness of the estimate. The Treasury appeared to have abandoned their duty of guarding the public purse in this matter, and he hoped, therefore, either that the Attorney-General would not press the point at this late hour, or that the matter would be left as the House of Lords had put it.

Mr. *Ayrton* thought that the safeguard proposed by the Attorney-General was quite sufficient. To adopt the Lords' amendment would be a stultification of the Legislature.

Mr. *Malins* would have been more satisfied if the Attorney-General had wholly dissented from the Lords' amendment; but as he proposed a conciliatory course he would not object to it.

The Lords' amendment, as amended, on the motion of the Attorney-General, was agreed to.

The Inland Revenue Bill was read a second time.

The District Church Tithes Bill was read a second time.

The Trespass (Scotland) Bill was read a second time.

The Court of Chancery (Ireland) Nos. 2 and 3 Bills were withdrawn.

The order for the second reading of the Arrest for Debt Abolition (Ireland) Bill was discharged.

## NEW CAUSES ENTERED IN TRINITY TERM.

### COURT OF QUEEN'S BENCH.

#### NEW TRIALS.

Derby—*Cartwright v. Forman*  
Middlesex—*Watts & ors. v. Lewis*  
—*Sullivan v. Hayward.*

### COURT OF QUEEN'S BENCH.

#### TRINITY TERM, 28 VICTORIA.—June 5.

This Court will, on Friday, the 16th, and Saturday, the 17th days of June instant, hold sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending; and will also hold a sitting on Tuesday, the 4th day of July next, for the purpose of giving judgments only.

BY THE COURT.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.—The Annual Meeting of the Department of Jurisprudence and Amendment of the Law will be held at 1, Adam-street, Adelphi, on Monday, the 19th June, when the Report of the Standing Committee on the proceedings during the year will be presented. Lord Brougham will take the chair at eight o'clock.—The Annual Dinner of the Department is fixed to take place at the "Ship" Tavern, Greenwich, on Saturday, the 24th June, at six o'clock. Members intending to be present are requested to forward their names to the office of the Association.

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## THE JURIST.

LONDON, JUNE 17, 1865.

LORD WESTBURY'S bill to confer on the county courts a limited jurisdiction in equity, as it has been sent down to the Commons, after amendment in committee of the Upper House, would hardly be recognised by its framer. It no longer provides that the county courts shall have all the powers of the Court of Chancery, except certain powers, trusting to Providence for the sufficiency of the exception. It no longer, in a variety of matters, authorises proceedings to be commenced in any one of the fifty-nine county courts at the option of the person instituting them, without regard to the place of abode of any of the parties concerned, or the situation of the subject-matter. It no longer gives jurisdiction in discovery, in perpetuating testimony, in regulating the custody of infants, in taxing solicitors' bills, in granting injunctions in certain matters of contract, and in restraining infringements of patents or copyrights, without limit as to the magnitude or nature of the interests to be affected. It is, in short, very much less absurd and mischievous than it was in its original form. But it is still very absurd, and very mischievous.

In the original bill it was proposed, that in a suit for recovering money, the amount sought to be recovered should not exceed 100*l.*, or in case of a mortgage 300*l.*; or if the object were to distribute an estate or fund, the total amount or value should not exceed 500*l.*; or if title to or waste upon "lands, tenements, or hereditaments" were in question, the annual value should not exceed 20*l.*; but if the subject were partnership, the gross assets should not exceed 500*l.*; and if it were a contract of sale, the value of the property should not exceed 300*l.* This characteristic motley has been rejected by the committee, and the amended bill mentions no other limit in point of amount than 500*l.* It is now proposed to give to the county courts equitable jurisdiction in the following matters:—

1. In suits by creditors, legatees, devisees, heirs-at-law, and next of kin, in respect of an estate not exceeding in amount or value 500*l.*
2. In suits for the administration of a trust of an estate not exceeding, &c.
3. In suits for foreclosure or redemption of, or for enforcing a charge or lien on, property not exceeding, &c.
4. In suits for enforcing or setting aside a contract for the purchase of property not exceeding, &c.
5. In proceedings under the Trustee Acts or the Trustee Relief Acts, in respect of a trust estate or fund not exceeding, &c.
6. In proceedings relating to the maintenance or advancement of an infant whose property does not exceed, &c.
7. In suits for dissolution or winding up of a partnership, the whole property, stock, and credits of which shall not exceed, &c.
8. In proceedings for orders in the nature of in-

junctions for relief in any matter in which jurisdiction is given by the act.

When the county courts were first established to enforce legal demands of a simple nature, their jurisdiction was limited to cases in which the claim did not exceed 20*l.* The limit has since been extended to 50*l.* The theory on which the limitation was made, and by which the appointments of the judges have been regulated, is, that either on account of the probable simplicity of the claims, or of their comparative unimportance, it would not be necessary to engage the most learned and able men to preside over these courts. But it has hitherto been thought, and still appears to be thought, unsafe to entrust these judges with power to decide in simple legal claims exceeding 50*l.* That being so, and the judges being, with very few exceptions, men who never practised or even studied in equity, it is now proposed to retain the old limitation of 50*l.* in legal claims, which they may be presumed to understand, and to give them an entirely new jurisdiction to the extent of 500*l.* in equitable matters, which it is certain they do not understand, and which it is exceedingly improbable that they ever will understand, even after the lapse of that month of September, 1865, which the bill expressly gives up to them (sect. 20), we presume, for study. What sort of equity will grow up in fifty-nine county courts, not only unconnected by a common bar, but absolutely without any bar, and for the most part profoundly ignorant of the very elements of equity? The confusion of equity which our learned Chancellor so earnestly desires will quickly be realised within the limit of 500*l.*

No one deems it worth while to report the decisions of the county courts; nor would they be any more worth reporting if the jurisdiction were extended; nor, if reported, would or could any use be made of the reports. We should have, therefore, a host of little vice-chancellors administering equity throughout the kingdom, to the extent of 500*l.* per cause, each according to the measure of his own foot; so that no solicitor or counsel could advise any man as to his rights in any matter of equitable jurisdiction within the limit of 500*l.*

The existing staff of county court judges and their doings have not given such perfect satisfaction to the community as to justify any extension of their authority; and the great objection to the measure is one which equally applies to the county court system as it exists. Justice cannot be duly administered in small cases, except by judges who are frequently engaged in administering it in important cases, giving occasion for the discussion of legal principles and their application by able counsel, and subject to revision on appeal. Nothing but extreme poverty can excuse a State from providing a sufficient number of duly qualified judges for the despatch of all its judicial business. What is wanted is a provision for the gradual change of the present system into a general administration of law and equity throughout the country in all matters, whether of large or of small amount, by one staff of judges, with their officers, in adequate number, equal, in point of abi-

lity and experience, to the present judges and officers of the superior courts, and equally well paid. Of these judges a sufficient number should be appointed to sit in country districts, interchanging their districts, at intervals of six or twelve months, for others in the country or in town, so as to avoid as much as possible local influence and prejudice. In each district the judge or judges should take the whole of the civil business of the district, subject to regulations for the conduct of administrative business and the decision of matters of minor importance by officers of the court answering to the present masters of the common-law courts and chief clerks of the equity courts, and to a provision for separate sittings to hear cases not conducted by counsel; and every judge should in rotation sit in banco. The law and equity and practice of judges who are habitually confined to petty cases will fall to as low a level. But a court whose judges and officers are accustomed to the consideration and conduct of weighty matters, and who are constantly assisted, watched, and controlled by the most eminent practitioners in both branches of the profession, will maintain consistency and uniformity in the principles and administration of the law. In the meantime, if there is any pressing need for supplementing the existing jurisdiction of the equity courts in small matters (which we doubt), the plan might be adopted which was suggested in a former article, of establishing provincial branches of the Court of Chancery, to be administered, under central control, by competent clerks.

### Reviews.

*A Practical Treatise on the Succession Duty Act, 16 & 17 Vict. c. 51, with the Decisions thereon in England, Scotland, and Ireland.* By WILLIAM BROWN, Esq., of Gray's Inn, Barrister-at-Law. 12mo., pp. 424. [Sweet.]

*The Succession Duty Act, 1853 (16 & 17 Vict. c. 51), with the Decisions and Notes.* By ALFRED HANSON, Esq., of the Middle Temple, Barrister-at-Law. 8vo., pp. 188. [Stevens & Haynes.]

THESE are both good and carefully prepared guides to the construction and application of one of the most obscure acts of recent legislation. Mr. Brown's more systematic and elaborate work will probably be found the best aid to a patient study of the act; Mr. Hanson's the most convenient for reference in practice. Mr. Brown treats, in successive chapters, of the policy, frame, object, and interpretation of the statute; of its time of commencement, and retrospective operation; of successions; of predecessors and successors; of the duties; of the powers of trustees; of the practice and procedure in the inland revenue office, and on appeals; of costs; and of the rights and duties of vendor and purchaser in relation to succession duty—a subject not touched upon by Mr. Hanson. He also prints the act in a novel form (probably suggested by Mr. Coode's *Analysis of an Enactment*), exhibiting in separate paragraphs the component parts of each enactment, and distinguishing by a different type the leading words.

Mr. Hanson's work, which is in the form of a reprint of the act, with annotations, has the recommendation of being smaller, more recent by six months than its rival, and of being the fruit of considerable experience, the author having been engaged in most of the English cases as junior counsel for the Crown.

While Mr. Hanson is careful not merely to state

with accuracy the circumstances of each case, but to bring out distinctly the reasoning or principle upon which the decision proceeded, he abstains entirely from criticism, and leaves his reader to form his own conclusion as to the soundness of the decision. There is little criticism in Mr. Brown's work; but as he undertakes the defence of the doctrine in *Lovelace's case*, *Wallop's Trust*, and *Capeveille's case*, which has been so much censured, we may infer, from his silence in regard to other cases, that he approves of them. Now, we think that in thus stating without comment many decisions, which, if not erroneous, have certainly not been generally approved of, both writers have mistaken their duty. In dealing with a subject like Lord Westbury's too famous "arrangement clauses"—equally muddled in conception and in expression—all that can be done is to ignore the enactments, and to hold by the decisions. But the Succession Duty Act, with all its faults, cannot be so treated. The design of it was clearly conceived, and has, on the whole, been consistently expressed. There are a few omissions; but the fault of the act is rather obscurity than incompleteness; while, so far as yet appears, it is free from inconsistency. If in applying such an act the Courts occasionally go wrong, and their decisions conflict with the principle and true interpretation of the enactments, the only possible result must be, that the erroneous decisions, as they can never be engrafted on the act, will sooner or later be overruled. It is the duty of a writer on the subject to forward the result by temperate criticism. We propose to devote our remaining space to an examination of the decisions in *The Attorney-General v. Gardner* (1 H. & C. 639; 9 Jur., N.S., part 1, p. 281) and *The Attorney-General v. Yelverton* (7 H. & Norm. 306; 7 Jur., N.S., part 1, p. 1250), on which neither Mr. Hanson nor Mr. Brown makes any comment. The question in *The Attorney-General v. Gardner* arose under the marriage settlement of the Marchioness of Townshend, made in the year 1807, by which the lady's father, W. D. Gardner, settled a fund, upon trust for the husband and wife successively for life; then for the children; and in default of children, upon such trusts as the wife should appoint; and in default of appointment, for her absolutely. Under a provision in the settlement, the fund was sold, and an estate was purchased with the proceeds, and conveyed to corresponding uses. In 1808 the marchioness, by deed, appointed the estate, after the death of herself and her husband without issue, to such uses as her father, W. D. Gardner, should appoint; and in default of appointment, to him in fee. The father in 1831 made his will, devising the estate to the defendant (a stranger in blood) for his life, with remainder to his first and other sons in tail, and died shortly afterwards. The marchioness survived her husband, and died, without issue, in 1858. The Court decided that the defendant must pay succession duty at 10% per cent., as on a succession from his testator. The case turned upon the 2nd and 15th sections of the act. The 2nd section enacts, "that every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this act," and every devolution by law of a like interest, upon a like death, either in possession or in expectancy, "shall be deemed to have conferred, or to confer, on the person entitled by reason of any such disposition or devolution, a 'succession;' and the term 'successor,' shall denote the person so entitled; and the term 'predecessor' shall denote the settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived." In the case under considera-

tion it would not be easy to discover the predecessor by the light of the 2nd section alone. The original settlement, the appointment by the marchioness, and the will of W. D. Gardner, were equally dispositions by reason whereof the defendant became entitled; and the original settlor, the marchioness, and the testator (who was the same person as the original settlor), were equally persons from whom the interest of the succession was derived. If the subsequent section of the act had contained no gloss upon the general enactment in the 2nd section, it would have been reasonable to conclude, that as only one succession and one predecessor seem to be contemplated with reference to the same death, the intention was to point to the disposition which first created the interest expectant on death, and to the person as the predecessor who made that disposition. It would be consistent with that construction to hold, that if a remainder, expectant on the death of M., was limited by A. to B., and B., dying in M.'s lifetime, devised the remainder to C., there would be, under the act, two successions, and two predecessors—one on the death of M. from the predecessor A.; another on the death of B. from him as predecessor; and we should then have to look to the clause imposing the duty to see how those successions respectively were charged. Accordingly, it will be found that the view last suggested of the purport of the 2nd section is adopted in the 14th section, which provides, that "where the interest of any succession in any personal property shall, before he shall have become entitled thereto in possession, have passed, by reason of death, to any other successor or successors, then only one duty shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession" [of course, if the clause had stopped here, at a rate according to the degree of his relationship to the person from whom he directly derived it; but the clause proceeds:—] "but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them." This provision only applies to the transmission of a succession to personal property after the commencement of the act. No such provision is made for the case of real estate, because the duty on a succession to real estate is not charged on the gross value of the estate, but only on the present value of the income of the estate for the life of the taker from the time of his becoming entitled in possession; so that a successor to an estate in fee-simple, who lives four years and a half after he comes into possession, is not charged in respect of his power of disposing of the fee after his death, but only for the value of his life interest. If a reversion in fee is devised, no duty is payable by the devisee until the succession falls in. But if the reversion is devised on trust for sale, and is sold before it falls in, both succession duty and legacy duty will be payable; succession duty by the purchaser when he becomes entitled in possession; legacy duty by the legatee of the purchase money.

If the act gave no further explanation, it would still be doubtful who should in *Gardner's case* be regarded as the predecessor in respect of the succession to the real estate which fell in on the death of the marchioness, such succession being derived from the testator, from the marchioness, and from the settlor. The 15th section of the act was intended by the framer of the act to resolve such doubts:—"Where, at the time appointed for the commencement of this act, any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the 2nd section of this act, then"

the duty shall be at the rate which the original taker would have paid if he had continued to be the owner; and the same provision is made for the case of a succession becoming, after the commencement of the act, vested "by alienation or by any title not conferring a new succession" in a new owner, before it falls into possession; the case of a title conferring a new succession to personal property being, as we have seen, already provided for by the 14th section, and that of a title conferring a new succession to real estate not being, as far as we have yet seen, specially provided for. Now, the Legislature might, if it had been so disposed, have reasonably made a distinction in respect of dispositions taking effect before the act, between dispositions of reversions for value and voluntary dispositions (whether taking effect on death or not), and devolutions on death. But it has not done so. The expressions "alienation or other derivative title" and "alienation or any title not conferring a new succession," are of the utmost generality, and include a disposition by the will of a testator dying before the commencement of the act (sect. 2).

Applying the 15th section to the case before us, we should have concluded, without any doubt, that the predecessor must be either the original settlor or the marchioness. The settlor, if the exercise by the marchioness of the general power of appointment interposed between her life estate and her remainder in fee, must be regarded as being, in the events which happened, a disposition of the reversion which was subsisting when the act came into operation; the marchioness, if the reversion which was subsisting on the 19th May, 1853, must be regarded as an interest created by her out of the fee-simple in possession, which, but for her own act, she would have had at the time of her death; and we should not have hesitated to prefer the latter view. But if the settlor was the predecessor, then it seems to be clear, that as he would also have been the successor, if the reversion had not been transmitted from him, no duty would be payable; while, if the marchioness was the predecessor (which we think is the right conclusion, whether her husband died before or after the commencement of the act), the duty would be at the rate of 17. per cent.

The reported reasons for the decision of the Court of Exchequer do not appear to us to be sufficient to control the express terms of the 15th section of the act. Martin, B., said, "The reversion in fee, which was vested in W. D. Gardner, might have been sold or mortgaged, or dealt with in like manner as any other fee-simple estate, and, in fact, was devised to the defendant by will; and it is difficult to see why succession duty should not be payable upon a disposition of it." The answer is, that the testator died before the succession duty was imposed. The learned judge then argued, that if the estate limited by the appointment was to be regarded as inserted in the settlement, W. D. Gardner would take it, not as a remainder under a disposition made by himself, but as a reversion which had never moved out of him; and that, under any view, he, on succeeding to the possession, would not have paid any duty; but the first part of the 15th section was intended to apply only to cases where the disponent or alienee would himself be chargeable with duty. If this construction be correct, the purchaser of a reversion from a reversioner liable to duty at the rate of 17. per cent. would pay duty at that rate; but if his vendor was not liable to any duty, he must pay at the rate of 107. per cent.—an anomalous distinction.

Bramwell, B., considered that a title by will was not within the words "vested by alienation or other derivative title;" but no reason for that construc-



tion is stated in the report, and we are unable to suggest any.

It is a remarkable illustration of the uncertainty attending the application of the act, that Mr. Thring, in his observations on the 15th section, puts the very case under discussion, and decides that no duty is payable, because the testator (W. D. Gardner) died before the commencement of the act, and, therefore, would never have become chargeable "if no such derivative title had been created"—a construction which we think is wholly opposed to the plain intent of the enactment, and which can only be regarded as a verbal quibble.

The Court considered the case to be governed by the decision in *The Attorney-General v. Yelverton* (7 H. & Norm. 306; 7 Jur., N. S., part 1, p. 1250). In that case an estate was settled in 1812 to the use of W. C. for life, and with remainder to his first and other sons in tail, with remainder to E. G. and her issue, with remainder to J. C. for life, with remainder to his son F. C. in tail. In 1850 W. C., being without issue, consented to a disentailing assurance by F. C. and thereupon, for a pecuniary consideration moving from W. C., F. C. charged the estate with 20,000*l.* for the use of W. C., to be paid with interest at the end of a year from the failure of the limitations to W. C. and his issue. A few days after W. C. assigned the 20,000*l.* to trustees, upon trust for two adopted children. W. C. died without issue in 1855. The 20,000*l.* became payable on the death of E. G. without issue in 1857, and the Court of Exchequer, with some doubt, and against the opinion of Bramwell, B., decided that duty was payable on the 20,000*l.*, at the rate of 10*l.* per cent., as a succession from W. C. It was contended against the claim of the Crown, that the purchase of the reversionary 20,000*l.* by W. C. was a contract of insurance, within the 17th section of the act, which did not create the relation of predecessor and successor between F. C. and W. C., the insured; and the whole interest in the money having been absolutely assigned by W. C. in his lifetime to his adopted children, there was no succession from him, within the concluding provisions of that section; and further, that the assignment by W. C. of his reversionary interest was within the 15th section, and F. C. was liable to pay duty on the full value of his estate, without any allowance for the 20,000*l.* (sect. 34). The majority of the Court relied on the general terms of the 2nd section, as including every disposition by reason whereof any person becomes entitled to property upon the death of another, and considered that the 15th section only applied to a reversion in respect of which the transferor would himself be liable to duty. They also relied on the authority of *Re Jenkinson* (24 Beav. 64), where the circumstances were substantially the same as in *Yelverton's case*, but the decision proceeded on the ground, that the money charged and made payable on the death of the tenant for life was not "a reversionary property expectant on death," within the first part of the 15th section. "It is impossible," said the Master of the Rolls, "correctly to say, that a sum of money which is to be raised upon the death of a person in existence is a reversionary fund, viz. that it is an existing sum of money settled in a particular way." As it is not likely that this ground of decision will be adopted in any other court, we need not criticise it. In *Gardner's case* the question arose upon a reversionary estate in land; but the three cases must stand or fall together. If, in *Jenkinson's case* and *Yelverton's case*, the defendants had derived title under a disposition made after the commencement of the act, they would not have been entitled to the benefit of the second part of the 15th section, because that only relates to the assignee of a succession; and in *Gardner's*

*case*, if the will under which the defendants claimed had not come into operation before the act, their title would have conferred a new succession, and thus have been out of the 15th section.

The argument in *Yelverton's case* against the claim of the Crown, that there was no succession from W. C., because the disposition made by him was an immediate, and not a reversionary, alienation, could not be disposed of merely by reference to the general terms of the 2nd section, because the application of that section is limited by subsequent provisions.

The argument for the defendants, founded on the 17th section of the statute, seems, at first sight, to be justified by the concluding proviso in that section, though it was certainly intended to have a contrary effect. It was even misunderstood by Mr. Thring, when he commented on the act. For his illustration is this:—"A. being entitled to a policy or bond, exempt from duty, settles the moneys payable thereunder on B. for life, with remainder to C. absolutely. C. pays the duty in the same manner as he would in respect of any other personal estate derived from the same source;"—implying that B. pays no duty. Mr. Trevor informs us that Mr. Thring no longer holds this opinion; which is, indeed, obviously incorrect. (Trevor, *Taxes on Succession*, 257). All that the 17th section enacts is, that an insurance or post obit bond or contract for value shall not create the relation of predecessor and successor between the parties to the contract, or (in the case of an insurance) between the insurers and an assignee of the policy; (the mention of an assignee of the bond or contract being apparently omitted only because such contracts are not assignable at law). This, of course, would leave the case of an assignment of the policy or bond to the operation of the 2nd section, as creating the relation of predecessor and successor between the assignor and the assignee. And what was wanted was, a declaration that such relation should not be created in the case of an assignment for money or money's worth. But instead of that, the framer of the act has added the superfluous and verbose proviso, that "any disposition or devolution of the moneys payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this act, shall be deemed to confer a succession." The words in italics almost justify Mr. Thring's original construction of the proviso.

The act contains no provision for the exemption of a purchaser of a reversionary interest from the duty, except the provision in the 15th section for the purchase of a succession, and that, already discussed, in the 17th section, for the cases of insurances and post obit contracts for the "payment of money or money's worth." So that, according to the terms of the act, if the owner of an estate, in consideration of money, conveys it to the use of himself for his own life, with remainder to the use of the purchaser, the purchaser will be liable on the death of the vendor to pay duty as on a succession from him. If this is not a just inference from the general provisions in the act, the express exceptions of policies and bonds in the 17th section was unnecessary. If it is a just inference, the exception should have been far more extensive; that is to say, to the effect that no disposition for valuable consideration shall be deemed to confer a succession from the person receiving the consideration. The act contains no such provision, nor does it give any general rule or principle for ascertaining the predecessor. But it may, perhaps, be presumed, that if A., for money or money's worth paid by B., limits an interest in property to be enjoyed by B. after A.'s death, B., and not A., is the predecessor. And again, that if the reversion is limited by A. to C., in consideration of money

paid by B. B. is the predecessor. But it has been decided, that if the consideration moving to the conveyance is the marriage of the successor, or of the parent of the successor, the person who conveys is the predecessor, although marriage is a valuable consideration. This is the conclusion arrived at by Mr. Han-son, as the result of the cases of *Re Jenkinson* (24 Beav. 64; 3 Jur., N. S., part 1, p. 279); *Re Ramsay's Settlement* (30 Beav. 75; 7 Jur., N. S., part 1, p. 1225); and *The Attorney-General v. Floyer* (9 H. L. C. 477; 9 Jur., N. S., part 1, p. 1); and stated in these terms:—"The result of the authorities, therefore, seems to be, that in order to constitute a person a predecessor, in respect of property which is not strictly his own, he must become a purchaser of the *jus deponendi* for valuable consideration, in money or money's worth; and that marriage, although in the eye of the law it constitutes a valuable consideration, is not a sufficient consideration for this purpose." (P. 25).

In *Floyer v. Bankes* (9 Jur., N. S., part 1, pp. 684, 1255), Henry Bankes, tenant for life, and W. J. Bankes, his eldest son, tenant in tail, suffered a recovery, and resettled the estate to such uses as they should jointly appoint; and in default of appointment, to the use of Henry Bankes for life, with remainder to such uses as W. J. Bankes, if he should survive his father, should appoint; and in default of appointment, to the old uses. In 1821 the two jointly appointed the estates to such uses as they should jointly appoint; and in default of appointment, to the use of Henry Bankes for life, with remainder to the use of W. J. Bankes for life, with remainder to his first and other sons in tail male, with remainder to the use of George Bankes, the second son of Henry Bankes, for life, with remainder to the use of his first and other sons in tail male, with remainder over. On the marriage of George Bankes, in 1822, his father and eldest brother, in exercise of their joint power, charged the estates with the payment of a jointure rent-charge of 500*l.* to the lady in bar of dower, to commence on her husband's death; and in case the lady should survive the appointor and her husband, and there should be no issue male of W. J. Bankes (which events happened), with the payment to the lady of a further rent-charge of 700*l.* Henry Bankes died in 1834; W. J. Bankes died in 1855, without having been married; and shortly afterwards George Bankes and Edmund George Bankes, his eldest son, executed a disentailing deed, and settled the property, limiting a life annuity to Edmund George Bankes in case he should survive his father. George Bankes died in 1856. We have already discussed some questions which arose on the settlement, and were decided in *The Attorney-General v. Floyer* (7 H. & Norm. 234; 7 Jur., N. S., part 1, p. 1062; 9 H. L. C. 477; 9 Jur., N. S., part 1, p. 1), 9 Jur., N. S., part 2, p. 29. In the case before the Master of the Rolls, the question was as to the liability of the jointress to succession duty. Sir J. Romilly, M. R., held, that no duty was payable, because the consideration of marriage upon which the settlement was founded was "money's worth," within the 17th section of the act, and because the relinquishment by the lady of her dower, freebench, and thirds was a further consideration. On appeal, the Lord Chancellor held, that the two rent-charges were a succession derived from the appointors, Henry and William J. Bankes (9 Jur., N. S., part 1, p. 1255). His Lordship said—"A contract, to be excepted, must be *bonâ fide* made in consideration of money or money's worth—words which appear to have been selected for the purpose of excluding the consideration of marriage. . . . The essential requisites of a contract which is not to create a succession, are clearly defined by the 17th section. First, it must be a con-

tract by one person to pay money or money's worth to another; secondly, it must be made *bonâ fide* for a valuable consideration, in money or money's worth—the contract creating personal liability between the contracting parties; and, thirdly, such a contract is prevented from creating a succession only as between the contracting parties; for all that the 17th section does is to declare that there shall be no relation of predecessor and successor between the person bound to pay and the person entitled to receive. As between any other persons, the contract may create a succession, and the transmission of the property to be received under such contract, by the death before the time of payment of the person entitled to it, may also create a succession." His Lordship then observed that there was no contract between the jointress and the appointors; and that if there was an implied contract between the husband and wife, it was not shewn that there were any estates out of which the wife would be dowable; and he added, that to treat marriage as a consideration within the 17th section, "would strike the words 'in money or money's worth,' which are annexed, and are restrictive of the words 'valuable consideration,' out of the section." The distinction between "value" or "valuable" and "money's worth" is not very clear; and if any distinction was intended to be made, the words have been unfortunately selected.

### CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S INN.—James Liddell Purves, Esq.; Matthew S. Grosvenor Woods, Esq., M.A.; Edward Samuel Farrier Moore, Esq.; Andrew Anderson, Esq., B.A.; Kenyon Wood Wilkie, Esq., B.A.; John Matthias Spread, Esq.; Thomas Smyth Abraham, Esq., B.A.; Archibald Hyndman Stein, Esq.; George Daw, Esq., B.A.; John Power Hicks, Esq., M.A.; Archibald Edward Dobbs, Esq., B.A.; Edmund Fuller Griffin, Esq., B.A.; John Finlaison, Esq., B.A.; William Gerald Seymour V. Fitzgerald, Esq.; John Lodwick Warden, Esq., B.A.; Edward Garnet Man, Esq.; William Henry Mitchell, Esq.; and Henry Francis Mutukisna, Esq.

MIDDLE TEMPLE.—Chaloner William Chute, Esq., M.A. (Certificate of Honour awarded by the Council of Legal Education); Reginald Montague Auber Branson, Esq. (Certificate of Honour awarded by the Council of Legal Education); Thomas Noon Talfourd, Esq.; John Wilson Gray, Esq., A.B. (of the Irish Bar); David Lindsay Macafee, Esq., B.A.; Frederick Baruch Toogood, Esq., B.A.; George Edwardes Dering, Esq., B.A.; Joseph Vere Woodman, Esq., B.A.; Richard Scott Kisbey, Esq.; Horatio Lucas Trenery, Esq.; Cecil Augustus Blake, Esq., B.A.; James Henry Minna, Esq.; William Jackson, Esq.; Charles Jones Nixon, Esq., M.A.; George Henry Haydon, Esq.; Jean Emile Floreus, Esq.; Martin William M'Kellar, Esq., B.A.; Charles Martin Gibson, Esq.; William Beaumont Badnall, Esq.; George William Marshall, Esq., LL.M.; Grove Humphrey Chapman, Esq.; Thomas Lionel Jenkins, Esq.; Hugh Davidson, Esq.; Henry Martin Franz Lumley, Esq.; Louis Arthur Goodeve, Esq., B.A.; William Cockerell, Esq.; Maurice Edmond Piston, Esq.; and George John Curran, Esq.

INNER TEMPLE.—William Thomas Charley, Esq., B.A. (Certificate of Honour, first class, Michaelmas Term, 1864, and holder of the Exhibition awarded in the present Trinity Term); Charles Jeffery, Esq., B.A.;



Benjamin Guest, Esq.; Richard Mashedor, Esq., B.A.; Henry Hibbert, Esq., B.A.; Robert Samuel Wright, Esq., M.A.; Donald Grant Macleod, Esq., LL.B.; William Pharazyn, Esq., B.A.; John Hampson Jones, Esq.; William Alexander George Goodall, Esq.; Albert Hutton, Esq.; Walter Patrick Joseph Purcell, Esq.; Frederick Lee, Esq., B.A.; Hugh Flamsteed Pigot, Esq.; Sir Charles Lawrence Young, Bart., B.A.; Owen Roberts, Esq., M.A.; John Macpherson, Esq., B.A.; Andrew Simon Lamb, Esq., Edinburgh, Scotch Advocate; Robert William Trouche, Esq.; George Clement Bertram, Esq., B.A.; Henry William Verey, Esq., B.A.; Charles Herbert Mallock, Esq., B.A.; and George Cockle, Esq., M.A.

GRAY'S INN.—John Hawtrey Thwaites, Esq., B.A.; Rowland Wilkinson, Esq.; John Jenkins, Esq., M.A.; Robert Carr Woods, jun., Esq.; Itudus Thomas Pritchard, Esq.; and Francisco Evaristo Pereira, Esq.

### Court Papers.

#### EQUITY SITTINGS, AFTER TRINITY TERM, 1865.

##### Before the LORD CHANCELLOR.

###### At Lincoln's Inn.

Thursday .. June 22	{ First Seal.—Appeal Motions and Appeals.
Friday .....	23 Petitions.
Saturday .....	24 Appeals in Bankruptcy and Appeals.
Monday .....	26 } Appeals.
Tuesday .....	27 }
Wednesday ....	28 Appeals in Bankruptcy and Appeals.
Thursday .....	29 { Second Seal.—Appeal Motions and Appeals.
Friday .....	30 Appeals.
Saturday .... July 1	Appeals in Bankruptcy and Appeals.
Monday .....	3 } Appeals.
Tuesday .....	4 }
Wednesday ....	5 Appeals in Bankruptcy and Appeals.
Thursday .....	6 { Third Seal.—Appeal Motions and Appeals.
Friday .....	7 Appeals.
Saturday .....	8 Appeals in Bankruptcy and Appeals.
Monday .....	10 } Appeals.
Tuesday .....	11 }
Wednesday ....	12 Appeals in Bankruptcy and Appeals.
Thursday .....	13 { Fourth Seal.—Appeal Motions and Appeals.
Friday .....	14 Appeals.
Saturday .....	15 Appeals in Bankruptcy and Appeals.
Monday .....	17 } Appeals.
Tuesday .....	18 }
Wednesday ....	19 Appeals in Bankruptcy and Appeals.
Thursday .....	20 { Fifth Seal.—Appeal Motions and Appeals.
Friday .....	21 Petitions and Appeals.
Saturday .....	22 Appeals in Bankruptcy and Appeals.

N.B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

##### Before the LORDS JUSTICES.

###### At Lincoln's Inn.

Thursday .. June 22	{ First Seal.—Appeal Motions and Appeals.
Friday .....	23 Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	24 }
Monday .....	26 } Appeals.
Tuesday .....	27 }
Wednesday ....	28 }
Thursday .....	29 { Second Seal.—Appeal Motions and Appeals.
Friday .....	30 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday .... July 1	{ Appeals.
Monday .....	3 }
Tuesday .....	4 }
Wednesday ....	5 }
Thursday .....	6 { Third Seal.—Appeal Motions and Appeals.
Friday .....	7 { Petitions in Lunacy, Appeal Petitions and Appeals.
Saturday .....	8 }
Monday .....	10 } Appeals.
Tuesday .....	11 }
Wednesday ....	12 }
Thursday .....	13 { Fourth Seal.—Appeal Motions and Appeals.
Friday .....	14 { Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	15 }
Monday .....	17 } Appeals.
Tuesday .....	18 }
Wednesday ....	19 }
Thursday .....	20 { Fifth Seal.—Appeal Motions and Appeals.
Friday .....	21 { Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	22 Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

##### Before the MASTER OF THE ROLLS.

###### At Chancery-lane.

Thursday .. June 22	{ First Seal.—Motions and General Paper.
Friday .....	23 General Paper.
Saturday .....	24 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	26 } General Paper.
Tuesday .....	27 }
Wednesday ....	28 }
Thursday .....	29 { Second Seal.—Motions and General Paper.
Friday .....	30 General Paper.
Saturday .... July 1	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	3 }
Tuesday .....	4 } General Paper.
Wednesday ....	5 }
Thursday .....	6 { Third Seal.—Motions and General Paper.
Friday .....	7 General Paper.
Saturday .....	8 { Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	10 }
Tuesday .....	11 } General Paper.
Wednesday ....	12 }
Thursday .....	13 { Fourth Seal.—Motions and General Paper.
Friday .....	14 General Paper.
Saturday .....	15 { Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	17 }
Tuesday .....	18 } General Paper.
Wednesday ....	19 }
Thursday .....	20 { Fifth Seal.—Motions and General Paper.
Friday .....	21 Petitions.
Saturday .....	22 { Remaining Petitions, Short Causes, and Adjourned Summonses.

Notice.—At the Sittings after Trinity Term, the Master of the Rolls will hear Further Considerations in priority to Original Causes, until those set down before the 19th June have been disposed of, after which the Master of the Rolls will hear Further Considerations on every Monday during the sitting of the Court.

N.B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

*At Lincoln's Inn.*

Thursday .. June 22	First Seal.—Motions, Adjourned Summons, and General Paper.
Friday .....	23 Petitions, Adjourned Summonses, and General Paper.
Saturday .....	24 Short Causes, Adjourned Summonses, and General Paper.
Monday.....	26 General Paper.
Tuesday.....	27
Wednesday ....	28
Thursday .....	29 Second Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	30 Petitions, Adjourned Summonses, and General Paper.
Saturday .... July 1	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	3 General Paper.
Tuesday .....	4
Wednesday ....	5
Thursday .....	6 Third Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	7 Petitions, Adjourned Summonses, and General Paper.
Saturday .....	8 Short Causes, Adjourned Summonses, and General Paper.
Monday.....	10 General Paper.
Tuesday.....	11
Wednesday ....	12
Thursday .....	13 Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	14 Petitions, Adjourned Summonses, and General Paper.
Saturday .....	15 Short Causes, Adjourned Summonses, and General Paper.
Monday.....	17 General Paper.
Tuesday.....	18
Wednesday ....	19
Thursday .....	20 Fifth Seal.—Motions, Adjourned Summons, and General Paper.
Friday .....	21 Petitions and Adjourned Summonses.
Saturday.....	22 Remaining Petitions, Short Causes, and Adjourned Summonses.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART.*

*At Lincoln's Inn.*

Thursday .. June 22	First Seal.—Motions and Causes.
Friday .....	23 Petitions and Causes.
Saturday .....	24 Short Causes and Causes.
Monday.....	26 Causes.
Tuesday.....	27
Wednesday ....	28
Thursday .....	29 Second Seal.—Motions and Causes.
Friday .....	30 Petitions and Causes.
Saturday .... July 1	Short Causes and Causes.
Monday.....	3 Causes.
Tuesday.....	4
Wednesday ....	5
Thursday .....	6 Third Seal.—Motions and Causes.
Friday .....	7 Petitions and Causes.
Saturday .....	8 Short Causes and Causes.
Monday.....	10 Causes.
Tuesday.....	11
Wednesday ....	12
Thursday .....	13 Fourth Seal.—Motions and Causes.
Friday .....	14 Petitions and Causes.
Saturday .....	15 Short Causes and Causes.
Monday.....	17 Causes.
Tuesday.....	18
Wednesday ....	19
Thursday .....	20 Fifth Seal.—Motions.

Friday .....	21 Petitions.
Saturday .....	22 Remaining Petitions & Short Causes.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.*

*At Lincoln's Inn.*

Thursday .. June 22	First Seal.—Motions and General Paper.
Friday .....	23 General Paper.
Saturday .....	24 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	26 General Paper.
Tuesday.....	27
Wednesday ....	28
Thursday .....	29 Second Seal.—Motions and General Paper.
Friday .....	30 General Paper.
Saturday .... July 1	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	3 General Paper.
Tuesday .....	4
Wednesday ....	5
Thursday .....	6 Third Seal.—Motions and General Paper.
Friday .....	7 General Paper.
Saturday .....	8 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	10 General Paper.
Tuesday.....	11
Wednesday ....	12
Thursday .....	13 Fourth Seal.—Motions and General Paper.
Friday .....	14 General Paper.
Saturday .....	15 Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	17 General Paper.
Tuesday.....	18
Wednesday ....	19
Thursday .....	20 Fifth Seal.—Motions and General Paper.
Friday .....	21 Petitions.
Saturday .....	22 Remaining Petitions, Short Causes, and Adjourned Summonses.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear such Further Considerations as are in the printed list in priority to Original Causes, and after the Fifth Seal, Motions, Remaining Petitions, and Adjourned Summonses only will be heard. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

**Imperial Parliament.**

HOUSE OF LORDS.—Tuesday, June 13.

Earl *De Grey* and *Ripon* presented a petition from the Leeds Chamber of Commerce against certain provisions of the Partnership Amendment Bill.

**PARTNERSHIP AMENDMENT BILL.**

Lord *Stanley of Alderley*, in moving the second reading of this bill, observed that one of its objects was to enable persons to lend money to traders, and receive a share of profits, without rendering themselves liable to the law of partnership. According to the law as it now stood, a person might lend money to any extent to a trader, and receive interest to any extent, without being constituted a partner, or rendering himself liable to the engagements of the trader if he became

bankrupt; but if he lent money on the condition of receiving a share of the profits, he became liable to all the engagements of the firm. He could see no good reason for the distinction between these two sets of money lenders, or why they should be treated in a different manner. Since 1855 the principle of limited liability had been very generally applied to all large undertakings in the country, and this bill might be considered as a complement to the Limited Liability Acts, by placing private traders on the same footing. In this respect the private trader would receive a great advantage, and at the same time he thought the creditor would derive greater security than he obtained at present. Besides enabling a person lending money to obtain a share of profits, the bill proposed to allow a widow or child of a deceased partner to receive a share of profits, without becoming a partner, which they could not do at present without rendering themselves liable to the debts of the concern. It would also enable a trader to give a clerk or servant a share of profits as a part of, or in addition to, a salary, without making him a partner. This would operate as an additional inducement to the clerk or servant to exert himself in the successful prosecution of the business.

Lord *St. Leonards* considered this a most important measure. There could be no doubt as to the law which regulated advances to traders. It was perfectly established, that if a man took the profits of business, he must be content to take the losses too. This law had led to the flourishing state of the country. If a man entered into trade, he did so with a view to profit. He gave to that trade the whole energy of his mind, his time, thoughts, and genius. It was on this foundation, the individual exertion of every man, that the prosperity of the country rested. His noble friend said that that measure was a sort of set-off to limited liability; but limited liability was a dangerous thing, which had already much altered the character of trading in this country. It was greatly to be desired, that the Government would take a comprehensive and statesmanlike view of the whole matter, and consider the general operations of all these limited companies, instead of asking their Lordships to deal with these measures piecemeal and one by one. Mortgage debentures would be floated in millions by these companies, and was it to be supposed that Exchequer bills could hold their ground against them? It would be most mischievous to encourage partnerships in which men with a certain capital could sweep away the lion's share of the profits without incurring any risk or performing any labour. By this bill, if a man sold half his business, and reserved to himself the other half, he would not share half the liability, as he ought in fairness to do, but would escape altogether; while, on the other hand, if he retained the whole business in his own hands, he would be liable for the whole of the risks of the concern. That was something so monstrous, that the very statement of it ought to make their Lordships hesitate in assenting to the second reading of that measure. A more dangerous blow could not be struck at the trading credit of the country than would be inflicted by such a bill.

Lord *Cranworth* asked whom it was the object of the existing law to protect—the lender or the borrower? At present one man might borrow and another lend a sum of money at an interest of 5*l.*, 10*l.*, or 15*l.* per cent., or on any other terms that might be agreed between them. The noble and learned Lord opposite seemed to think, however, that this measure would operate hardly on the creditor; but the creditor's remedy would not really be affected by it; it would remain as it was before. If the creditor recovered a judgment against the partnership, he could take the partnership assets. Unless this bill, or a bill of a similar description, were passed, a very grievous injury would be inflicted on private traders, who had to compete with companies now having the benefit of limited liability.

Lord *Wensleydale* was understood to say he had no objection to the principle of the bill, provided certain alterations were made in some of its clauses.

The Lord Chancellor would be sorry if the able arguments which, in common with the majority of the House, he had not had the good fortune to hear with sufficient distinctness, induced any of their Lordships to vote against the second reading of this bill, which had been introduced for the purpose of freeing the law of partnership from an anomaly founded upon an erroneous decision pronounced many years ago, which had led to the most mischievous consequences.

There could be no doubt that the existence of a partnership should depend upon the conduct and intention of the parties, and that where there was a contract and agreement between the parties, the law should declare the existence of a partnership, but that where there was no such contract and agreement, the law should not force a partnership upon parties except in cases where they had held themselves out to the public to be partners. But the principle of the law of England, as construed by a decision given nearly 100 years ago, went to the extent of declaring, that in any case where individuals shared the profits of an undertaking, they should be partners in the eye of the law, notwithstanding any agreement to the contrary which they might have entered into among themselves. That principle was a most unjust one, and it was repugnant to the principles of English law. It had, however, taken its rise from the natural tendency of our Courts to give validity to a contract if they could possibly do so. A case came before Lord Mansfield, in which he found he could not do so in consequence of the very large rate of interest, which would have rendered the contract void under the then existing Usury Laws. In order, therefore, to uphold the agreement between the parties, Lord Mansfield ruled that it should be upheld as a partnership. By general consent the Usury Laws, the parent of the principle of partnership, against which this bill was directed, had been done away, and it was time now to get rid of their mischievous offspring. In other cases the law of England had taken great care to prevent fraud. If a man handed over money or goods to a trader, that money or those goods were liable to the trader's creditor; but that was a very different thing from making a man liable to not only the full amount which he had lent to a trader, but to the last farthing which he possessed in the world. Under the ruling of Lord Mansfield, acted on by the judges, the law invented a contract which did not exist, and then made the parties to that supposed contract liable for the fulfilment of engagements which they never intended to undertake. A learned and eminent friend of his had laid down, that if a man had agreed to share in the gross receipts from a business he was not a partner, but if he had agreed to share in the net profits he was a partner. Now, where was the difference between the two cases? Again: if a person in trade said to his clerk, "I shall give you 500*l.*, which you shall take out of the profits," the clerk at once became a partner; but if the employer said to him, "I shall give you 500*l.* a year if I make 1000*l.*," not adding words stating that the 500*l.* was to come out of profits, the clerk was not a partner. Such were the artifices which lawyers were obliged to make use of in order to apply this principle of partnership. They were obliged to go round, and traverse, and make use of subtle distinctions, which brought the law into contempt, because it put it at variance with the common sense of mankind. Trade contracts ought not to depend on subtle distinction, or what was called "judge-made law," but on the wholesome and well-established principles of the law of England. The object of this bill was to remove an objectionable exception. It was a bill of great importance to the community, for if there were one principle better established in reason and common sense than another, it was that trade should be free; that mercantile contracts should be free; that these contracts, as far as they possibly could be, should be construed in accordance with the intentions of the parties; that they should be upheld by law, and take effect just as they had been intended to take effect. The principle which this bill would put an end to had a very injurious operation as regarded encouragement to industry and talent. A man might be willing to encourage industry or talent by an advance of 1000*l.* or 5000*l.* towards a doubtful enterprise; but he was unable to do so because of the frightful consequences of those decisions staring him in the face. He thought it was time to declare that the law of partnership should be of a more liberal character, and more in accordance with the English law generally. It had been the policy of our laws to make trade in land free, because it had been determined that property should not be locked up for longer than a particular time. The general policy of our law was in accordance with the principles of political economy, but the partnership law as it existed, in virtue of judicial decisions, was an exception. He trusted that their Lordships would give their countenance to a bill which was wise and prudent in its design, and which would be of great advantage to the mercantile and commercial interests of the country. He be-

lieved that many of the social difficulties which now existed between employers and employed would probably be removed by the operation of this bill. There were many classes of intelligent workmen whose wise employers would desire to bind to a concern by giving them an interest in its welfare, and making their remuneration depend on its success. That could not now be done; but if this bill were passed, it would be possible to establish such a binding tie as this between employers and employed. If that were the result of this measure, he was sure that their Lordships would agree that a more beneficial and wholesome measure could not be introduced into Parliament.

The bill was then read a second time.

#### MORTGAGE DEBENTURES BILL.

The House went into committee upon this bill, but after some conversation the House resumed; and

The Earl of *Malnesbury* gave notice that on Thursday he would move that the bill be referred to a select committee.

#### LAND DEBENTURES (IRELAND) BILL.

The Earl of *Cork* moved the second reading of this bill, and expressed his willingness to refer it to the same select committee to which the previous bill should be referred.

The bill was read a second time.

### HOUSE OF COMMONS.—Monday, June 12.

#### THE LAW OF EVIDENCE BILL.

In answer to Mr. *Scully*,

Sir *F. Kelly* said it was his intention to proceed with his bill during the present session, and he hoped the Secretary of State for the Home Department would give him Thursday night for that purpose.

Sir *G. Grey* said the Chancellor of the Exchequer's Malt Duty Bill was fixed for Thursday, but there would be no objection to place the Law of Evidence Bill next on the paper.

#### PUBLIC EXECUTIONS.

In answer to Mr. *Göschén*,

Mr. *Hibbert* said, that as the report of the commission appointed to inquire into the subject of capital punishment within the precincts of the prison had not been presented, he should postpone the second reading of his bill until Wednesday, the 21st instant.

#### RECORD OF TITLE (IRELAND) BILL.

The House went again into committee upon this bill.

On clause 6,

Mr. *Whiteside* moved, in line 25, to leave out the words, "and no declaration of title so entered upon the record shall be registered in the office for registering deeds in Ireland."

The Attorney-General admitted the force of the amendment, and proposed to meet the right hon. gentleman's views by the addition of certain words to clause 16.

On clause 7,

Mr. *Whiteside* moved to leave out the word "not" in line 35, his object being to render the bill completely permissive, as the promoters of it said they wished it to be.

The Attorney-General objected to the amendment, on the ground that the word proposed to be left out would not, in the slightest degree, affect its permissive character.

The amendment was negatived, and the clause was agreed to, as were also clauses 8 and 9.

On clause 10,

Mr. *Whiteside* moved the insertion of words giving access to to registry of deeds in Ireland for the purpose of inspection, according to the statutes regulating the Registry of Deeds Office.

The Attorney-General opposed the amendment, as calculated only to gratify the curiosity with regard to private property of persons not otherwise interested in it; but ultimately conceded the addition of words, giving an enlarged power of inspection, intermediate between the clause and the amendment—adopting, in fact, the clause for the English Registration Act.

The clause, thus amended, and the remainder of the clauses were agreed to, with some verbal amendments.

Mr. *Whiteside* moved the following additional clause:—  
"That any person who has obtained from the Commissioners for the Sale of Incumbered Estates in Ireland or from the Landed Estates Court a conveyance or declaration of title, or who shall

hereafter obtain the same, may apply every five years by summary petition, supported by such evidence as the Court shall require, to be declared the owner, with registry of indefeasible title as originally granted by the Court; and upon the declaration of the Court, granted and registered or recorded as may be required by law, the person named therein shall be deemed owner as declared, to all intents and purposes."

The Attorney-General objected to the clause.

Sir *H. Cairns* said the clause was likely to introduce a new question as to costs.

The clause was negatived.

The schedule, with slight amendment, was agreed to, and the bill passed through committee.

The Colonial Laws Validity Bill, the Colonial Marriages Validity Bill, and the Penalties Law Amendment Bill were read a second time.

#### PRISONS BILL.

Some amendments in this bill were considered and agreed to.

Tuesday, June 13.

#### PRISONS BILL.

On the order of the day for the third reading of this bill,

Mr. *Neate* said he objected to the principles of the bill; in the first instance, because it continued unnecessarily a bad system; next, because it delegated important duties to persons not the best qualified to perform them. Another great objection to the bill was, that it did not provide for the promotion of gaolers, which was requisite for the efficiency of the public service. The governors of prisons were very much dissatisfied with the present system of appointments being in the hands of the magistrates. Another great objection he had to the bill was, its increase of severity, and he thought it would be a great stain upon the legislation of the country if the House were to sanction the principle of penal non-productive labour. In other countries, the work given to prisoners was not merely for the sake of punishment. Labour for the mere sake of punishment was a species of torture. The hon. member here referred to some notes which he had made upon a recent visit to a French prison. The periods of confinement in that prison were similar to our own. The prisoners were employed in productive labour, and every one was allowed about a quarter of his day's earnings; part of the money was handed over to him, and he laid it out in some little indulgences. The average earnings were about 10d. a day, and he was allowed to spend 2d., and 2d. more was put away, and given to him when liberated. There was no solitary confinement, but no conversation was allowed; and, with a view to preserve order in separate cells, a monitorial system was adopted, and one prisoner of better conduct than the rest was placed over a cell where several slept, and of course the warder paid repeated visits. He thought it was a matter of serious reflection to the country, that while we professed to be the most Christian and the most religious, the most loyal and prosperous people in the world, yet, while other nations were pursuing a course of humane and gentle legislation, we found it necessary to retrace our steps, and return to increased severity.

The bill was then read a third time, and passed.

#### RECORD OF TITLE (IRELAND) BILL.

A motion for the insertion of the "stamps" clause in this bill was agreed to.

The following bills were then considered, and their various clauses agreed to:—Navy and Marines (Wills), Navy and Marines (Property of Deceased), Navy and Marines (Pay and Pensions), Colonial Laws Validity, and Colonial Marriages Validity.

#### THEATRES, &c. BILL.

Mr. *Locke* in moving the second reading of this bill, explained that such a measure had been rendered necessary in consequence of the action taken by the managers of certain theatres. Having obtained a monopoly, they wished to prevent all other persons who did not possess the Lord Chamberlain's license from giving any stage performances which interfered with such license. These powers were claimed under the 6 & 7 Vict. c. 61, called the Dramatic Licensing Act, which empowered the Lord Chamberlain to license theatres in certain districts of the metropolis—namely, in Westminster, the Tower Hamlets, Southwark, Lambeth, and Marylebone. The rest of the metropolis and the country

generally were licensed by the magistrates, with the exception of certain royal residences, concerning which there was some dispute. Previous to the passing of the act the patent theatres—Drury Lane, Covent Garden, and the Haymarket—possessed the exclusive right of performing the legitimate drama, although what that was it was difficult to discover, for, with the exception of Sadler's Wells and one or two other theatres, the performances were by no means legitimate. Besides the Licensing Act, the 6 & 7 Vict., there was the act of the 25 Geo. 2, c. 36, which was called the Music and Dancing Act, and was passed to restrain persons from having public music or dancing on their premises without the license of the magistrates granted at quarter sessions. Under that act the minor theatres, as distinguished from Drury Lane, Covent Garden, and the Haymarket, were in the habit of playing what were called burlettas and melodramas, which were not prohibited under the act. In 1831-2 a select committee of that House was appointed to consider the subject of dramatic literature. The committee came to the conclusion that the trade in theatres ought to be thrown open, and that all the theatres ought to have the power of performing any plays they thought proper. A crusade had been commenced against the music halls. There was not a literary institution in the country, if these managers of theatres had their way, that would be permitted to perform a scene out of Shakespeare's plays or a portion of an opera. The managers formerly cried out for free trade, but they were now monopolists. They claimed to go further than the proprietors of the patent theatres, and wanted to have a monopoly of every species of stage performance. Such a state of things ought not to be permitted. The theatrical managers alleged that they wanted to uphold the drama; but did they do so? It was said that in some of those music halls eating and drinking and smoking were allowed. Well, was the House aware that a license to a theatre to perform stage plays carried with it a wine, beer, and spirit license? In most theatres beer, gin, and cordials were sold. No less a sum than 1,067,000*l.* had been spent in building and fitting the London concert halls, music halls, and entertainment galleries. These places would accommodate 179,000 people, and he believed that they were conducted with the greatest propriety. The number of theatres in London was twenty-three; the number of these places of entertainment, forty-five. He stated shortly the object of the bill was to legalise the performance of stage plays at any place where the magistrates' music and dancing license had been obtained. But if the House thought that the performance of every species of stage plays ought not to be sanctioned at any but licensed theatres, could there be any objection to the music halls having the same privilege which the minor theatres possessed before the monopoly was broken up—namely, the performance of burlettas, interludes, and melodramas? It must be remembered that the Lord Chamberlain's surveillance would still apply to these places; and he proposed certain provisions to insure the safety of the audience.

Mr. *Newdegate* said it was evident the subject was a very wide one. He therefore moved the adjournment of the debate.

Mr. *H. Berkeley* believed that this bill would have the effect of turning every pothouse into a theatre, and every theatre into a pothouse.

Dr. *Brady* also thought the passing of the bill would reduce the drama to the lowest pitch it had ever stood at in the country.

The debate was adjourned.

Wednesday, June 14.

The Penalties Law Amendment Bill passed through committee.

The Colonial Laws Validity Bill, the Colonial Marriages Validity Bill, and the Lunatic Asylum Act (1853), &c. Amendment Bill, were read a third time, and passed.

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# THE JURIST.

LONDON, JUNE 24, 1865.

AMONG the difficulties that have confronted owners of adjoining properties on rebuilding or altering their premises, one question has in modern times been conspicuously prominent, viz. what is the effect of the alteration of ancient windows by the person entitled to them? For the benefit of non-professional readers who may seek for information in our columns, we may mention, that when the right to have light through a particular window is once established by twenty years' uninterrupted user, the adjoining owner cannot build on his land so as to materially obstruct the passage of light through the window, and that, therefore, the acquisition of such a right very seriously detracts from the value of the adjoining property over which it dominates, and very frequently altogether prevents its being used for any valuable purpose. The mode of preventing the acquisition of such a right when a new window is opened is, for the adjoining owner to erect on his own land a structure of some kind sufficient to stop the access of light to the window, and so prevent that uninterrupted user by means of which it might grow into a permanent right. Two pieces of land adjoin; they belong to different owners; one may build a house, and open a hundred windows; the other also may build on his own land, and block up the hundred windows; and on neither side is there any infraction of the law. But when the right is once acquired, as it may be if there is no opposition, and the window becomes an ancient window, then the adjoining owner, *rebus sic stantibus*, can no longer build either a house or any kind of structure which will interrupt the passage of light to the ancient window. Now, suppose the case of the right established, and the ancient window in existence, can its owner, on rebuilding his premises, enlarge or alter the structure of his ancient window, and yet not lose his right? And if he does by such a step lose his right, does he lose it entirely and for ever, or may he, by restoring the window to its original state, have his right again? Or may he, without enlarging the ancient window itself, or in any way changing its site or structure, ingeniously surround it with new windows, and make it a kind of protector to the settlement, and say to his neighbour, "You cannot make me undo one bit of all this; my ancient window still is there; you cannot build before it?" On these questions there have been for a long time many conflicting opinions. The House of Lords, however, has, in a recent case, now settled the law, and given, at all events, certainty, instead of doubt. With regard to the various decisions and dicta on these points before the court of ultimate appeal was reached, some of the judges seem to have approached the view finally taken; others to have differed by various shades; and the views of each of them are so well supported by reason and authority, that any of them might reasonably have been held to have been right, and may still be thought by their

propounders only to be wrong, because held to be wrong by the highest court of judicature. The House of Lords has now, in the recent case of *Tapping v. Jones* (11 Jur., N. S., part 1, p. 309), without hearing counsel, except on the side unfavourable to its judgment, distinctly overruled the well-known cases of *Renshaw v. Bean* (18 Q. B. 112; 16 Jur., part 1, p. 814) and *Hutchinson v. Copestake* (9 C. B., N. S., 826; 8 Jur., N. S., part 1, p. 54), and has placed the law, without hesitation, on grounds not to be mistaken—a plain and simple exposition of the law given, as it were, from a hill not to be commanded, where the air is always clear and serene above the errors, and wanderings, and mists in the vale below.

We can only shortly advert to some of the decisions. In *Renshaw v. Bean* the plaintiff had, on rebuilding his premises, added an upper storey, opened windows in it, and enlarged and altered the position of his ancient windows in the lower storeys. The defendant, the adjoining owner, subsequently also rebuilt his premises, and thereby darkened the windows both in the upper and lower storeys of the plaintiff's house; and it was held that he was justified in doing so; the plaintiff having, by his alterations, exceeded the limits of his right in such a manner that the defendant could not obstruct the new windows without obstructing the passage of light through what remained of the ancient windows; and it was, therefore, held, that the plaintiff lost his right, at least, until he restored the house to its former condition; though semble, that such alteration did not destroy the right altogether. The old authorities were very much referred to in the arguments in *Renshaw v. Bean*, and among other observations, Lord Campbell, in delivering the judgment of the Court, said, "We by no means say that where the owner of a house alters the dimensions of an ancient window, that he may in no case maintain an action for that which is an obstruction to the window in its new state, and would have been an obstruction to it in its former state; this would be contrary to a long series of decisions, beginning with *Luttrell's case* (reported by Lord Coke), "If the wall in which the window is be on the extremity of the owner's land, and the window is enlarged at the lower part of it, the owner of the adjoining land can easily obstruct the unprivileged part of the window, and would not be justified in building a wall which would obstruct the whole; but there was no mode of merely obstructing the new and unprivileged windows and the privileged portion of the windows in the lower storeys in this case; and the obstruction of the privileged portions of these windows is a necessary consequence of the obstruction of the unprivileged portions."

In *Hutchinson v. Copestake* it was held, in accordance with *Renshaw v. Bean*, that where the owner of a dominant tenement has windows which are privileged, and he enlarges them, the owner of the servient tenement has a right to prevent the acquisition of the new right, and block up the unprivileged part, and that if he cannot block up the one, without at the same time interfering with the other, he is not liable to an action for obstructing the whole. The same question arose in *Jones v. Tapping* (11 C. B., N. S., 283; 9 Jur., N. S.,

part 1, p. 462). The plaintiff being possessed of a house of three storeys, with privileged windows, rebuilt it, lowering and enlarging the windows in the first and second floor, and adding two new storeys to the building, with windows. The altered windows each occupied part of the space before occupied by the ancient windows; the window on the third floor remained as it always had been. The defendant rebuilt his premises, and obstructed the whole of the plaintiff's windows, it being impossible (as found in a special case) to obstruct the new light without at the same time obstructing the old. The plaintiff thereupon stopped up the new windows and restored the ancient windows, and then required the defendant to remove the obstruction. It was held by the whole Court, that inasmuch as the defendant could not obstruct the new lights, as he had a right to do, without obstructing the old at the same time, he was justified in obstructing all. It was further held by Byles, J., and Keating, J., that the obstruction being lawful at the time of the erection, the defendant was not bound to remove it, on the defendant's stopping up the new windows and restoring the ancient windows. And by Erle, C. J., and Williams, J., that the continuance of the obstruction, after the cause for its erection had been withdrawn, was an unlawful act.

The old doctrine as to the right to light resting on an implied grant, was gone into in the arguments, and much considered, though Williams, J., observed that it was difficult to conceive how the right to light could be rested on an implied grant, since Lord Tenterden's Act.

The cases of *Renshaw v. Bean* and *Jones v. Tapling* were commented on by Vice-Chancellor Kindersley in *Martin v. Headon* (11 Jur., N. S., part 1, p. 5), who, though impressed with the difficulties of the subject, rather questioned the right of reacquiring the right to an ancient window, where the ancient window has been altered so as no longer to be the window it was. And as to the case where the act done by the owner of the dominant tenement is not the alteration of his ancient light, but an attempt to acquire an entirely independent light or easement, by the opening of an independent new window, so that, while preserving his ancient light, he endeavoured to acquire a new easement, Vice-Chancellor Kindersley, without expressing any decided opinion, stated that his leaning would be against such right. The junior judge in *Tapling v. Jones* withdrew his opinion, in order that judgment might be given in favour of the plaintiff, and the case was appealed against; and on the appeal in the Exchequer Chamber the judgment was affirmed, though not without different views of the law being taken by the judges; Mr. Justice Crompton and Mr. Justice Wightman considering that the original obstruction was lawful, but that continuing the obstruction after the occasion for it had ceased was unlawful; Mr. Baron Bramwell and Mr. Justice Blackburn thinking that the original obstruction was unlawful; and Chief Baron Pollock and Baron Martin holding that the original obstruction being lawful when erected, could not become unlawful at the option and by the act of the aggressor.

The case came finally before the House of Lords, who put the law on the simple footing of an absolute statutory title, and the Lord Chancellor observed, that after an enjoyment of an access of light for twenty years, without interruption, the right was declared by statute to be absolute, and indefeasible; and that it would seem, therefore, that it could not be lost or defeated by a subsequent temporary intermission of enjoyment, not amounting to an abandonment; and, moreover, that this absolute and indefeasible right, which was the creation of the statute, was not subjected to any condition or qualification, nor was it liable to be affected or prejudiced by any attempt to extend the access or use of light beyond that which, having been enjoyed uninterruptedly during the required period, was declared not to be liable to be defeated, and that the right to enjoy light through a window looking on a neighbour's land, on whatever foundation it might have rested previously to the passing of the 2 & 3 Will. 4, c. 71, depends now on the provisions of that statute. The Lord Chancellor had, at the commencement of his judgment, rejected the doctrine of presumed grant as no longer applicable, saying, that since the statute it was matter juris positivi, and did not require, and therefore ought not, to be rested on any presumption or fiction of license having been obtained from the adjoining proprietor; and the Lord Chancellor, Lord Cranworth, and Lord Chelmsford unanimously held, that the defendant below was not, even in the first instance, notwithstanding the attempted encroachments and alterations by the plaintiff below, justified in erecting the building complained of, and obstructing the access of light and air to the privileged portions of the windows of his house; and the judgment below was affirmed, though not on the same grounds on which the majority of the judges below proceeded.

The practical information to be deduced from the foregoing observations for the benefit of the owners of adjoining properties who may either contemplate the rebuilding their premises, or be apprehensive of, and desirous of resisting, encroachments attempted by the alteration and enlargement of ancient windows, or the opening of new ones overlooking their property, is, that a man, on rebuilding his premises, may open any number of new windows; and if there are ancient lights, or, in other words, privileged windows, he may alter or enlarge these, or surround them with new windows, and in this state of things his old right will be preserved, and it may be very difficult for his neighbour to prevent the acquisition of a new right to the new windows, or the enlarged portion of the old ones; for the law says, that whatever he does, he must not obstruct the ancient windows, or any portion of them, however disguised by alterations and enlargements. The right is still there in the eye of the law, always supposing that there has been no act done on the part of the dominant owner unequivocally shewing an intention to abandon it altogether. Now, the neighbour whose premises are overlooked may obstruct by any structure or mechanical device placed on his own land all the entirely new windows, and all the new portion of the old windows, though he cannot raise a building that will block up the old site of the ancient windows, or any portion of it. And thus, in the case of contending adjoining owners, the matter is remitted to the skill of the architects. The rebuilding architect can exercise his ingenuity to so blend the old and new that the one cannot be obstructed without the other. The resisting architect, on the other hand, must endeavour, by some structure or mechanical device, to interrupt all that is new, without interrupting that precise amount of light and air that used to have access to the ancient windows, which

must be ascertained, as well as may be, although the ancient windows themselves are no longer discernible. The law itself, when once finally settled, is a simple thing. Its rules are such that he who runs may read them, though the difficulty will still remain of applying them to the facts; and this difficulty of applying the law to the facts seems wisely to be left for the jury. It is said that the late Mr. Justice Maule, on being asked what questions were for the judge, and what for the jury, replied, that easy questions were for the judge, and difficult ones for the jury. So here, the duty of a judge will henceforth be easy, and the difficulty will only be for the owners of adjoining properties, and their architects, in the first instance, to be followed, if litigation ensues, by that of the jury, who may have to settle on oath the precise effect of the structures on both sides, and the precise limits of ancient lights no longer discernible to the material eye, and ponder without meat, drink, or fire, on very simple law, and very doubtful facts.

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TRINITY TERM, 1865.

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To Mr. Clare, one of the prizes of the Incorporated Law Society.

To Mr. Taylor, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Thomas Frederic Artindale, who served his clerkship to Messrs. Handaley & Tattersall, of Burnley.

Herbert Bramley, who served his clerkship to Messrs. Bramley & Gainsford, of Sheffield, and Messrs. Prior & Bigg, of London.

Frederick Corbett, who served his clerkship to Mr. Edward Corles, of Worcester.

Samuel John Daw, jun., who served his clerkship to Mr. Charles Kitson, of Torquay, and Mr. George Edward Philbrick, of London.

William Edward Marsh, who served his clerkship to Mr. Richard Marsh, of Leigh, Lancashire, and Messrs. N. C. & C. Milne, of London.

Henry John Tweedy, who served his clerkship to Messrs. Smith & Roberts, of Truro, and Messrs. Gregory & Rowcliffes, of London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes if they had not been above the age of twenty-six:—

1. Francis Buckland.
2. John Edward Thorley Graham.

The number of candidates examined in this term was 157; of these 143 were passed, and 14 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,  
London, June 16, 1865.

### Court Papers.

### EQUITY CAUSE LISTS, AFTER TRINITY TERM, 1865.

\*\* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for

Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—  
R. Rehearing—Sp. C. Special Case—S. O. Stand Over—  
Sd. Short.

*Before the LORD CHANCELLOR and the LORDS JUSTICES.*

#### APPEALS.

Green v. Crockett } (Pt. hd.)  
Crockett v. Green } L. C.  
Lees v. Lees (R., April 15)  
Bridecake v. Lees (S., May 5)  
Mathers v. Green (R., May  
12) L. C.  
Jopp v. Wood } (R., May  
Smith v. Jopp } 12) L. C.  
Goold v. Great Western  
Deep Coal Co. (Li-  
mited) v. Great West-  
ern Deep Coal Co.  
(Limited) v. Goold } Pt.  
hd.)  
Nunn v. Fabian (R., May 29)  
L. C.  
Mortimer v. Bell (R., May  
29) L. C.

Robinson v. Clarke (R., May  
30) L. C.  
Andrews v. Jones (W., May  
31)  
Robinson v. Clarke (R., May  
31) L. C.  
Davies v. Shepherd (W., June  
3)  
Blackett v. Bates (W., June  
9)  
Ivimey v. Stocker (K., June  
15)  
Kirkwood v. Thompson (W.,  
June 16)  
**CAUSES.**  
Baxendale v. West Midland  
Railway Co. (M D) L. C.  
Baxendale v. Great Western  
Railway Co. (M D) L. C.

*Before the Right Hon. the MASTER OF THE ROLLS.*

#### CAUSES, &c.

Wight v. Robinson (Cause)  
Ormerod v. Rostrom (F C)  
Howard v. Earl of Shrewsbury  
(Cause)  
Cheesman v. Price (M D)  
Pink v. Aburrow (M D)  
Thomas v. Chorley (M D)  
Earl of Durham v. Legard (M  
D)  
Beaumont v. Cauthery (M D)  
Goldsmid v. Tunbridge Wells  
Improved Commissioners  
(M D)  
Rucker v. Seymour (M D)  
Att.-Gen. v. Smith (M D,  
Witnesses) June 30  
Southampton, Isle of Wight,  
and Portsmouth Improved  
Steam-boat Co. (Limited)  
v. Pinnock (Cause) June 27  
Same v. Muntz (Cause)  
Same v. Rawlins (Cause)  
Hunt v. Hunt (F C)  
Bloxsome v. Chichester (Cau.)  
Bloxsome v. Chichester (Cau.)  
Branford v. Howard (M D)  
Carter v. Carter (M D)  
Brown v. Langton (F C)  
Brandon v. Barlow (M D)  
Whitwell v. Arthy (M D)  
Greetham v. Colton (M D)  
Barrow v. Tyrer (M D)  
Smith v. Harding (M D)  
Barillon v. Carr (M D)  
Henderson v. Campbell (M D)  
Clay v. Fenton (M D)  
Richardson v. Lancaster and  
Carlisle Railway Co. (M D)  
Cox v. Bockett (Cause, Wit-  
nesses) July 4  
Staniland v. Staniland (F C)  
June 23  
Craggs v. Gray } (F C)  
Webb v. Gray }  
Goodyear v. Bruton (M D)  
Nightingale v. Yates (Cause)  
Greenhow v. Price (M D)  
Moore v. Marrable (M D)  
Verelst v. Midland Railway  
Co. (M D)  
Mitchard v. Mitchard (M D)  
Windsor v. Campbell (M D)

Hale v. Allaway (M D)  
Cox v. Langley (M D)  
Lord Kenlis v. Earl of Bective  
(M D)  
Calcraft v. Thompson (Cause)  
Kemp v. Nowell (M D)  
Smith v. Smith } (F C)  
Trinder v. Smith } June 23  
Vestry of the Parish of Ber-  
mondsey v. Brown (M D)  
Chapman v. Woodgate (M D)  
Coote v. Ede (M D)  
Whitelock v. Lane (Cause)  
Adnutt v. Wright (Sp C)  
Vandravart v. Ingle (F C)  
Wallis v. Morris (F C)  
Tagg v. Brookings (M D)  
Wood v. Drew (F C, 2 Sum-  
monses to vary certificate)  
Babb v. Smith (M D)  
Clarke v. London & Chatham  
Dover Railway Co. (M D)  
Manby v. Hall (M D)  
De Winton v. Thomas (Cau.)  
Williams v. Williams (Cause)  
M'Carogher v. Whieldon }  
Whieldon v. M'Carogher }  
(F C, Sums. to vary cert.)  
Grant v. Grant (Cause)  
Louthean v. Cater (Cause)  
Champain v. Coghlan (M D)  
Vidler v. Lansdown (M D)  
Bailey v. Bailey (M D)  
Williams v. Glenton (M D)  
Hayden v. Kirkpatrick (M D)  
Birt v. Sleeman (M D)  
Manfield v. Green (M D)  
Bateman v. Roynnton, Bart.  
(M D)  
Carr v. Livingston (M D)  
Adams v. Dudley and West  
Bromwich Banking Co.  
(Cause)  
Baillie v. M'Kewan (M D)  
White v. Fowler (M D)  
Att.-Gen. v. Boynder (M D)  
Earl of Shrewsbury & Talbot  
v. North Staffordshire Rail-  
way Co. (Cause)  
Leggatt v. Warren (Cause,  
Witnesses) June 23  
Dykes v. Dykes (M D)

Baker v. Parke (Cause, Wit-  
nesses) July 3  
Steward v. Baker (M D)  
Gregory v. Soames (M D)  
Beck v. Palmer (M D)  
Davies v. Roberts (Cause)  
June 26  
Cusack v. Henry (Cause)  
Tweedie v. Phelps (M D)  
Baylis v. Todd (Cause)  
Scott v. Key (M D)  
Green v. Green (M D)  
Fairfax v. Taylor (M D)  
Molesworth v. Brown (M D)  
Wycombe Railway Co. v.  
Donington Hospital (M D)  
Maile v. Looker (Cause)  
Baker v. Ruse (M D)  
Groom v. Caldclough (M D)  
Howells v. Wilson (Cause)  
Snegin v. Snegin (M D)  
Graham v. Morris (M D)  
Elmer v. Ferguson (M D)  
Williams v. Hall (M D)  
Banks v. Gibson (M D)  
Iredale v. Varty (M D)  
Bruce v. Bruce (M D)  
Gibson v. Dawson (M D)  
Hewett v. Agar (M D)  
Craven v. Craddock (M D)  
Frisby v. Smith (M D)  
Norman v. Padgen (Cause)  
Schotsman v. Lancashire and  
Yorkshire Railway Co. (M  
D)  
Fox v. Willis (M D)  
Wedderburn v. Knyvett (M  
D)  
Taylor v. Taylor (Cause)  
Butler v. Grave (M D)  
Reay v. Woolley (Cause)  
Hardwick v. Wright (Cause,  
Witnesses)  
Evans v. Thomas (M D)  
Dennis v. French (M D)  
Robinson v. Welch (M D)  
Wedderburn v. M'Mahon (M  
D)  
Bostock v. Floyer (M D)  
Offen v. Munn (Cause)  
Mills v. Scotchford (M D)  
Western v. M'Dermot (Cause)  
Ward v. Carttar (Cause)  
Hancock v. Reeves (M D)

Ryland v. Richardson (M D)  
Redman v. Gregory (F C)  
Adams v. Adams (M D)  
Wayman v. Marking (M D)  
Wickham v. Marquess of Bath  
(F C)  
Down v. Ellis (M D)  
Price v. Cheesman (Cause)  
Witnesses  
In re Boyce Thoma-  
ton's Estate } (F C,  
Swire v. Thornton } from  
Weller v. Aldridge (M D) } Cham.)  
Johnson v. Rawlinson (F C)  
Sydney v. Clarkson (M D)  
Andrews v. Tyrrell (F C)  
De Houghton, Bart. v. Mosey  
(Cause)  
In re Brayshaw } (F C,  
Brayshaw v. Bray-  
shaw } Cham.)  
Lee v. Lee (Cause)  
Edwards v. Merryweather (F  
C)  
In re Johnson's Es-  
tate } (F C,  
Pattison v. Street } from  
Tregar v. Williams (M D) } Cha.)  
Howes v. Poole (Cause)  
Howse v. Poole (Cause)  
Tomlinson v. Leigh (M D)  
In re Corbett } (F C,  
Corbett v. Glaze-  
brook } from  
Kelland v. Fulford (M D) } Chamb.)  
Staples v. Stevenson (F C)  
Sharp v. Gibbs (M D)  
Hole v. Hole (Cause)  
M'Dermott v. Seymour (Cau.)  
In re Penison's Es-  
tate } (F C,  
Griffiths v. Plunkett } Cham-  
Penson v. Plunkett } bers)  
Wilson v. Bowen (F C)  
Walker v. Ware, Hadlam, and  
Buntingford Railway Co.  
(M D)  
Davies v. Boffey (F C)  
Lambarde v. South-eastern  
Railway Co. (M D)  
Dodsworth v. Marshall (Cau.)  
Stephens v. Sullivan (Cause)  
Barber v. Dawson (M D).

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

#### CAUSES, &c.

Pearse v. Dobinson (D)  
Stewart v. Great Western  
Railway Co. (D)  
Smart v. Hawksworth (M D)  
Millard v. Ellyett (M D)  
Earl of Eglington v. Lamb,  
Bart. (M D)  
Earl of Eglington v. Lamb,  
Bart. (M D)  
Maxwell v. Mackenzie (Cau.),  
Maxwell v. Wright (otherwise  
Mackenzie) (Cause, Wit-  
nesses) June 26  
Towns v. Wentworth (M D)  
Walsh v. Jupp (M D)  
Att.-Gen. v. St. John's Hos-  
pital, Bath (M D, Ptn)  
Pentney v. Lynn Paving Com-  
missioners (M D)  
Norval v. Pascoe } (F C)  
Thomas v. Pascoe }  
Turner v. Sowdon (M D)

Stockport District Water-  
works Co. v. Jowett (M D)  
Dunsany v. Dunsany (F C,  
Ptn.)  
Aylward v. Dedman (M D)  
Jones v. Higgins (M D)  
Ransome v. Burgess (M D)  
Luttman Johnson v. Coombe  
(F C)  
White v. King (F C)  
Gregory v. Pilkington (F C)  
Yane v. Cockermouth, Ke-  
wick, and Penrith Railway  
Co. (M D)  
Scott v. Harrison (M D)  
Coventry v. Coventry (F C)  
Att.-Gen. v. Aust (M D)  
Belchier v. Belchier (M D)  
Painter v. Ford (Cause)  
Goss v. Jones (M D)  
Stone v. Fisher (M D, Motion)  
Preston v. Melville (F C)

London, Hamburg, and Continental Exchange Bank (Limited) v. Rochefort (M D)  
 Lambe v. Orton } (F C)  
 Lambe v. Orton }  
 Macdonald v. Boucher (F C, Sum. to vary certificate)  
 Jones v. Owen (M D)  
 Pince v. Beattie (F C)  
 Pattenson v. Russell } (F C)  
 Day v. Russell }  
 Lamprell v. Griggs (F C, Ptn)  
 Fox v. Charlton } (F C)  
 Charlton v. Hall }  
 Morgan v. Neath and Brecon Railway Co. (M D)  
 Isaac v. Winston (Cause)  
 Davies v. Benham (M D)  
 White v. London, Chatham, and Dover Railway Co. (M D)  
 Clark v. London, Chatham, & Dover Railway Co. (M D)

Malins v. London, Chatham, and Dover Railway Co. (M D)  
 Appleton v. Rowley (M D)  
 Credit Foncier of Mauritius (Limited) v. Harris (M D)  
 Foster v. Bonner (F C)  
 Buckridge v. Whalley (F C)  
 Windham v. Bugg (M D)  
 Coope v. Crosswell (M D)  
 Sandilands v. Gilchrist (Cau.)  
 Gilchrist v. Sandilands (Cau.)  
 Kell v. Nokes (F C)  
 Robeson v. Whittingham (Cau.)  
 Wilkinson v. Eykyn (M D)  
 Riches v. Wilkins (M D)  
 Edmunds v. Waugh (F C)  
 Att.-Gen. v. St. John's Hospital, Bath (M D)  
 Steer v. Steer (M D)  
 Johnson v. Hodgson (Cause)  
 Nicholas v. Walsh (M D)  
 Butt v. Imperial Gas-light & Coke Co. (M D)

Sharman v. Egar (M D)  
 Lawton v. Wicksted (F C)  
 Grills v. Grills (M D)  
 Blacklock v. Donald (F C)  
 Hobson v. Hobson (M D)  
 Bird v. Bird (F C, Summons)  
 Brutton v. Jewell (M D)  
 Abbott v. Rawson (F C)  
 James v. James (F C)  
 Whitman v. Aitken (M D)  
 Roberts v. Roberts (Cause)  
 Cooke v. Cooke (F C, 2 Summonses)  
 Williams v. Govey (F C)

Jones v. Lock (F C)  
 Birtwistle v. Birtwistle (F C)  
 Taylor v. Manners (Summons to vary)  
 Montgomerie v. Lord Foley (M D)  
 Harwood v. Harwood (M D)  
 Heaton v. Cress (M D)  
 Reeve v. Jones (F C)  
 Hawkes v. Greenhalf (F C)  
 Whitbourn v. Whitbourn (M D)  
 Dobbs v. Nugent (M D)

Before the Vice-Chancellor Sir W. P. Wood.

CAUSES, &c.

Collins v. Catley (Cause)  
 Jackson v. Ivinney (D)  
 Clarke v. Clark (M D)  
 Lushington v. Lushington (M D)  
 Mitchison v. Buckton (M D)  
 Jackson v. Oglender, Bart. (M D)  
 Woods v. Sowerby (M D)  
 Winears v. Westby (M D)  
 Pepper v. Hensell (Pl)  
 Woods v. Hensell (Pl)  
 Reed v. Hensell (Pl)  
 Wedderburne v. Thomas (Cau. P C)  
 Duke of Northumberland v. Great Western and Brentford Railway Co. (Cause)  
 Beard v. Turner (M D)  
 Savin v. Oswestry and Newtown Railway Co. (M D)  
 Tate v. Williamson (M D)  
 Davenport v. Phillips (M D)  
 Windham v. Cooper (M D)  
 Barra v. Fewkes (Cause, Witenesses) July 5  
 Budge v. Gummow (M D)  
 Williams v. Osborne (M D)  
 Doswell v. Reece (F C)  
 Ford v. Tynte and five other causes (F C, Sum. to vary, 2 Ptns)  
 Wood v. Foley (M D)  
 Duke of Portland v. Hill (M D)  
 Wyld v. Parker (M D)  
 Heath v. Wallington (M D)  
 Field v. Wallington (M D)

Stables v. Powell (F C)  
 Holden v. Holden (F C)  
 Hasluck v. Hasluck (F C)  
 Reading v. Atkins (M D)  
 Knox v. Gye (M D)

Roberts v. Pollard } (F C, Sum. to vary certificate)  
 Turner v. Wilson }

Wilson v. Hart (M D)  
 Hallworth v. Frost (Cause)  
 Hayward v. Braine (M D)  
 Watson v. Robinson (M D)  
 Wills v. Bush (F C)  
 Hill v. Curtis (Cause)  
 Ledward v. Mersey Docks & Harbour Board (M D)  
 Campbell v. Campbell (M D)  
 Cocks v. Cocks (M D)  
 Birt v. Gainey (M D)  
 Hinde v. Morton (Cause)  
 Jenner v. Jenner (M D)  
 Buckham v. Buckham (Cau.)  
 Earl de la Warr v. Lord Cavendish (M D)  
 Millard v. Bailey (M D)  
 Ainsworth v. Walmaley (M D)  
 Fountaine v. Carmarthen and Cardigan Railway Co. (M D)  
 Earl of Stamford and Warrington v. Dawson (M D)  
 Yates v. Jack (M D)  
 Brown v. Jackson (M D)  
 Allhusen v. Whittall (M D)  
 Woods v. Lamb (M D)  
 Ewen v. Candler (M D)  
 Caulfield v. Caulfield (M D)  
 Alliance Bank v. Motion (M D)  
 Pennell v. Davison (M D)  
 Simpson v. Wild (M D)  
 Davies v. Tatham (M D)  
 Steele v. Stuart (M D)  
 Martin v. Martin (Sp C)  
 Tetley v. Brown (Cause)  
 White v. Chitty (M D)  
 Lower v. Earl of Shaftesbury (Cause)  
 Hopwood v. Ernest (F C)  
 Kelsey v. Fowler (Cause)  
 Coleman v. Butcher (F C)  
 Anstie v. Caunter (Cause)  
 Dear v. Webster (M D)  
 Denham v. Cox (M D)  
 Walker v. Brettall (M D)  
 Whitehouse v. Palmer } (F C)  
 Palmer v. Palmer }  
 Watkins v. Neath and Brecon Railway Co. (M D)  
 Montagu v. Lansdown (F C)

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Shand v. Spelts (D)  
 Moss v. Anglo Egyptian Navigation Co. (Limited) (D)  
 Hacker v. Mid Kent Railway Co. (D)  
 Johnstone v. Hamilton (F C, part heard)  
 Newton v. Hume (Cause)  
 Williams v. Williams (F C)  
 Depree v. Bedfordshire (F C)  
 Morris v. Llanelly Railway and Dock Co. (M D)  
 Peter v. Jones (M D)  
 Kendal v. Grainger (Cause, Evidence to be taken vivâ voce) July 8  
 Price v. Peppercorn (Cause)  
 Taylor v. Padwick (F C)  
 Godfrey v. Consols Insurance Association (M D)  
 In re Simpson's Estate } (F C, Sum. to vary from Cham.)  
 Langley v. Simpson }  
 Brodie v. Hall (Sp. C)  
 Long v. Kent (M D)  
 Hitchins v. White (M D)  
 Appleton v. Austin (F C, Summons)  
 Merryweather v. Jones (F C)  
 Soady v. Turnbull (F C)  
 Collins v. Wheeler (M D)  
 Taylor v. Hales (F C)  
 Taylor v. Walker (M D)  
 Berrow v. Berrow (F C)  
 Harding v. British Nation Life Assurance Association (Cause)  
 Atkinson v. Robinson (M D)  
 Humphrey v. Roberts (F C, Summons)  
 Currie v. Larkins (F C)  
 Frost v. Ward (F C)  
 Brown v. Raskcombe } (F C)  
 Brown v. Weller }  
 Smith v. Edwards (M D)  
 Martin v. London, Chatham, and Dover Railway Co. (M D)  
 Skelton v. Arnold } (F C)  
 Skelton v. Arnold }  
 Cadbury v. Cadbury (F C)  
 Harries v. Rees (M D)

Louis, Bart., v. Strachey, Bart. (F C)  
 Hooper v. Surridge (F C)  
 Gibson v. Barker (F C)  
 Fitzgerald v. Woolmer (Cau.)  
 In re Stanley's Estate } (F C, Sum. to vary from Cham.)  
 Godfrey v. Hollingsworth }  
 Moore v. Barber (F C)  
 Benwell v. Dudley (F C)  
 Holden v. Pell (M D)  
 Pitcher v. Pitcher (F C)  
 Spirett v. Willows (F C)  
 May v. Ramsey (F C)  
 Hume v. Pocock (M D)  
 Hollings v. Bevan (M D)  
 Leigh v. Leigh (M D)  
 Williams v. Freeman (Cause, P C)  
 Frampton v. Edwards (F C)  
 Balmforth v. Chambers (Cau.)  
 Cottrell v. Cottrell (F C, Sum.)  
 Jones v. Griffiths (F C)  
 Bosworth v. Cole (M D)  
 De Winton v. Hall (M D)  
 Ainsley v. Cannan (F C)  
 Wilson v. Charlton (F C)  
 Sisson v. Giles (F C)  
 Pitts v. Macey (M D)  
 Seagram v. Goodman (M D)  
 Barrett v. Edwards (M D)  
 Anthony v. Oldrieve (F C)  
 Ramsay v. Sheldermine (M D)  
 Knight v. Knight (M D)  
 Brown v. Walters (Cause)  
 Edwards v. Martin (M D)  
 Walton v. Walton (M D)  
 Barnes v. Tarbutt (M D)  
 Lovegrove v. Downs (M D)  
 Westborough v. Clissold (F C)  
 Att.-Gen., at the relation of the Skinners' Co. v. Charing-cross Railway Co. (M D)  
 Sherwin v. Cheslyn (F C)  
 Ackroyd v. Briggs (M D)  
 Johnson v. Cross (M D)  
 Richards v. Ennor (M D)  
 Munday v. Pierdem (F C)



Goode v. Winkles (Trial by jury) July 10	Williams v. Williams (F C)	Singleton v. Selwyn (Cause)	Trinder v. Trinder (M D)
Richardson v. Stones (M D)	Hensley v. Wills (M D)	Turnbull v. Walker (F C)	Cropton v. Smith (F C)
Smith v. Owen (M D)	Sturges v. Sturges (M D)	Muggeridge v. Bell (F C)	Daw v. Eley (M D)
	Turner v. Elkins (Sp C)	Wiltshire v. Marshall (Cause)	Briscoe v. Carpenter (M D).

## CIRCUITS OF THE JUDGES.

(Mr. Baron MARTIN will remain in Town).

SUMMER CIRCUITS, 1885.	N. WALES.	S. WALES.	NORFOLK.	HOME.	WESTERN.	NORTHERN.	OXFORD.	MIDLAND.
	CJ Cockburn	J. Shee	L. C. J. Erle LCB Pollock	J. Crompton B. Pigott	J. Willes J. Keathing	B. Bramwell J. Smith	B. Channell J. Byles	J. Blackburn J. Mellor
Thursd., July 6	.....	Haverfordw.	.....	.....	.....	.....	.....	.....
Saturday... 8	.....	[ & Town	.....	.....	.....	.....	.....	Warwick
Monday... 10	.....	Cardigan	.....	.....	.....	.....	Abingdon	.....
Tuesday... 11	.....	.....	.....	.....	.....	Durham	.....	.....
Wednesday... 12	.....	.....	.....	Hertford	Winchester	.....	Oxford	.....
Thursday... 13	.....	Carmarthen	Oakham	.....	.....	.....	.....	.....
Thursday... 13	.....	.....	Leicester and	.....	.....	.....	.....	.....
Saturday... 15	.....	.....	[Borough	.....	.....	Newcastle &	Worcester &	Derby
Monday... 17	Newtown	Cardiff	Northampton.	Chelmsford	.....	[Town	[City	.....
Wednesday... 19	.....	.....	.....	.....	Salisbury	.....	.....	.....
Thursday... 20	Dolgelly	.....	Aylesbury	Lewes	.....	Carlisle	Stafford	Nottingham
Saturday... 22	.....	.....	.....	.....	Dorchester	.....	.....	[ & Town
Monday... 24	Carnarvon	.....	Bedford	Maidstone	.....	Appleby	.....	.....
Tuesday... 25	.....	.....	.....	.....	.....	Lancaster	.....	Lincoln and
Wednesday... 26	.....	.....	.....	.....	Exeter & City	.....	.....	[City
Thursday... 27	Beaumaris	.....	Huntingdon	.....	.....	.....	.....	.....
Friday... 28	.....	Brecon	.....	.....	.....	.....	.....	.....
Saturday... 29	.....	.....	Cambridge	.....	.....	Manchester	.....	York & City
Monday... 31	Ruthin	.....	.....	Croydon	.....	.....	Shrewsbury	.....
Wednes., Aug. 2	.....	.....	Norwich and	.....	Bodmin	.....	.....	.....
Thursday... 3	Mold	Presteign	[City	.....	.....	.....	Hereford	.....
Friday... 4	.....	.....	.....	.....	.....	.....	.....	Leeds
Saturday... 5	.....	.....	.....	.....	.....	.....	Monmouth	.....
Monday... 7	Chester &	Chester &	Ipswich	.....	Wells	.....	.....	.....
Wednesday... 9	[City	[City	.....	.....	.....	.....	Glouc. & City	.....
Saturday... 12	.....	.....	.....	.....	Bristol	Liverpool	.....	.....

## Imperial Parliament.

## HOUSE OF LORDS.—Thursday, June 15.

Lord Stratford de Redcliffe presented a petition against the Courts of Justice Site Bill from a lady who owned seventeen houses in New Boswell-court, Lincoln's-inn. This lady derived her only means of living from the rents of those houses, and through the frequent notices which had been served upon her, in reference to the proposed scheme for building the new courts of justice, she had lost the chief portion of her rents since the beginning of the year 1880. Although he was not exactly aware of what could be done for the lady's relief, he thought her case worthy of some consideration, when the question of compensating the owners of the property taken under the bill arose.

Lord Chelmsford had great doubts whether there was any legal mode of compensating the lady when the bill passed.

The Lord Chancellor said the evil arising from notices of this description had attained such proportions, that some general legislative enactment should be brought in to meet it.

## COMMON-LAW COURTS (FEES) BILL.

On the motion of the Lord Chancellor, the Commons' amendment to the Lords' amendments on this bill was considered, and agreed to.

## PARTNERSHIP AMENDMENT BILL.

This bill passed through committee.

## LAND DEBENTURES BILL.

On the motion of the Earl of Cork, this bill was referred to the select committee before which the Mortgage Debentures Bill was to be inquired into.

## MORTGAGE DEBENTURES BILL.

On the motion of the Earl of Malmesbury, this bill was referred to a select committee, consisting of the Lord Chan-

cellor, the Duke of Marlborough, the Marquis of Salisbury, the Marquis of Bath, the Earl of Malmesbury, Viscount Hutchinson, Lord Boyle, Lord Stanley of Alderley, Lord Cranworth, Lord St. Leonards, and Lord Chelmsford. The noble earl gave notice that he should move the addition of the names of Earl Grey, Lord Redesdale, and another, whose name we did not catch.

The Land Debentures Bill was read a second time, and ordered to be referred to the same select committee.

## Monday, June 19.

The royal assent was given, by commission, to the following bills:—Commissioners of Supply (Scotland); District Church Tithes, Middlesex (No. 2); Lancaster Court of Chancery; Married Women's Property (Ireland); Pilotage Orders Confirmation; Common Law Courts (Fees); Local Government Supplemental (No. 3); Dogs Regulation (Ireland); Courts of Justice Concentration (Site); Courts of Justice Building; Militia Ballots Suspension; Militia Pay, and about fifty private bills.

## THE STATUTE LAW.

The Lord Chancellor presented a bill for completing the revision of the Statute Law and expurgation of the Statute Book. The noble Lord said that the statutes of the realm were at present in forty-four quarto volumes. The bills presented by him on former occasions, and which had passed into a law, carried the revision and expurgation down to the reign of James II inclusive, and the bill which he had now the honour to introduce completed the entire work of revision. He was happy to say, that if this bill passed into a law the new edition of the whole of the living statutes which would follow would probably be comprised in ten volumes only, of the same average size as at present. This, however, was by no means the end of the work. The next step would be to arrange the Statute Law in the form of a digest, under the most appropriate heads, forming a complete analytical arrangement, and then to revise and expurgate the unwieldy and still increasing mass of the decided cases, reducing them

to such as constituted the body of existing authorities, and which might in their turn be digested and arranged. Their Lordships would be glad to hear that the House of Commons had voted a sum of money for this purpose, and he trusted that the work would go on successfully until the whole of the written and unwritten law was ascertained, reduced into order, and brought within a reasonable compass. The noble and learned Lord concluded by moving the first reading of the bill.

After a few words from Lord St. Leonards, the bill was read a first time.

The Partnership Amendment Bill was reported, with amendments.

The following bills were read a second time:—The Prisons (Scotland) Act Amendment Bill, the Trespass (Scotland) Bill, the Ecclesiastical Leasing Act Amendment Bill, the Pier and Harbour Orders Confirmation Bill, the Lunatic Asylum Act (1833) Amendment Bill, the Pilotage Order Confirmation (No. 2) Bill, the Smoke Nuisance (Scotland) Acts Amendment Bill, the Procurators (Scotland) Bill, the Churches and Chapels Exemption (Scotland) Bill, the Colonial Laws Validity Bill, Colonial Marriages Validity Bill, and the Defence Act (1860) Amendment Bill.

Tuesday, June 20.

Lord St. Leonards presented a petition from the Chamber of Commerce and manufacturers of the city of Edinburgh, praying that provision might be made in the Law of Partnership Bill for the registration of the special partnerships, and for preventing the withdrawal of the money advanced before the time contracted for.

Lord Redefdale presented a petition in favour of an alteration in the constitution of the Final Court of Appeal.

#### PRISONS BILL.

Earl Granville, in moving the second reading of this bill, said that its object was twofold. It was partly to consolidate the existing law in relation to prisons, which in some particulars was contradictory, and beyond that, it proposed to amend the present law. The amendments which it proposed to introduce into the law of prisons were based chiefly on the recommendations of a committee of their Lordships' House. The chief object was to secure greater uniformity in the management and discipline of prisons, and greater uniformity also in the carrying out of the punishment of hard labour. The bill was one of great detail.

After some observations by the Earl of Carnarvon, the bill was read a second time.

#### LAND DEBENTURES (IRELAND).

The Earl of Cork moved that the Land Debentures (Ireland) Bill be committed to a committee of the whole House.

Lord St. Leonards opposed the motion. The committee were of opinion that, on principle, the bill ought not to proceed. It would be an invitation to every Irish proprietor to mortgage his estate. It would enable him to make a sham mortgage, to get it registered, and then to issue debentures on his property to the amount of that sham mortgage.

The Earl of Donoughmore said that the decision of the committee was arrived at by the votes of five English peers against three Irish ones, and he thought that his noble friend was perfectly justified in appealing against it to the whole House. This measure had been very carefully considered by a select committee of the House of Commons, and had received the sanction of that House. He hoped that their Lordships would agree to the motion.

The House then divided, when the numbers were—

Content .. .. .	51
Non-content .. .. .	14
Majority .. .. .	37

The bill as amended then passed through committee.

The following bills then passed through committee, and the reports were received:—Mortgage Debentures (Amendment), Prisons (Scotland) Act Amendment, Trespass (Scotland), Ecclesiastical Leasing Act (1858) Amendment, Pier and Harbour Orders Confirmation, Pilotage Order Confirmation (No. 2), Smoke Nuisances (Scotland) Acts Amendment, Procurators (Scotland), Churches and Chapels Exemption (Scotland), Colonial Laws Validity, Colonial Marriages Validity, and Defence Act (1860) Amendment.

The Union Chargeability Bill was read a third time, and passed.

#### HOUSE OF COMMONS.—Thursday, June 15.

##### INLAND REVENUE BILL.

In committee on this recommitment bill,

On clause 16, Mr. M<sup>r</sup> Mahon said this clause made receipts given for sums deposited on allotments of shares liable to stamp duty. Was it not desirable that the letters of allotment themselves should also be subject to the duty?

The Chancellor of the Exchequer said, that at present he felt precluded from requiring that letters of allotment should be subject to the duty.

The clause was agreed to.

On clause 22, Sir C. O'Loghlen said this clause directed that appeals against adjudications on stamp duties in Scotch cases should be determined by the Court of Exchequer in Scotland. He wished to know why appeals in Irish cases was not to be determined in Ireland.

The Chancellor of the Exchequer said, if that was not so, he would introduce an amendment.

On clause 25, Sir W. Jolliffe inquired to whom the appeal lay from the decisions of the Commissioners of the Inland Revenue and of the justices. He had hoped that the Chancellor would have introduced a clause which would have prevented the litigation and expenses likely to arise under this clause.

The Chancellor of the Exchequer said the appeal lay to the superior courts, as in ordinary cases. The subject was one more of police than coming strictly within the duties of a finance minister.

On the motion of The Chancellor of the Exchequer, the following new clause was substituted for clause 7:—

"In lieu of the stamp duty of 5s. now chargeable by law on any charterparty, or any document chargeable with stamp duty as a charterparty, there shall be charged and paid thereon the stamp duty of 6d., and it shall not be lawful under any pretence whatever for the Commissioners of Inland Revenue to stamp, after the same shall have been signed, any charterparty, or any such document as aforesaid which, after the expiration of one calendar month from the passing of this act, shall be made on or by means of any printed form, or on a form which shall be partly printed, and if any person after the period aforesaid shall make or sign any charterparty, or other such document as aforesaid, which shall be printed or partly printed, and shall not be duly stamped for denoting the duty hereby charged thereon before the same shall be signed, he shall forfeit the sum of 50*l*.; provided always, that if any charterparty or other such document as aforesaid, which shall be wholly in writing shall be brought to be stamped within the respective times herein-after mentioned after the same shall bear date and shall have been first signed, the commissioners shall stamp the same on the following terms—that is to say, if within fourteen days, on payment of the duty and 4*s*. 6*d*., and if after that time, and within one calendar month after such date and first signing, then on payment of the duty and the sum of 10*l*.; but after the expiration of the last-mentioned period it shall not be lawful to stamp such charterparty or other document as aforesaid on any pretence whatever; provided always, that if any charterparty, whether printed or written, shall be first signed by any party thereto out of the United Kingdom, such charterparty being unstamped, it shall be lawful for any party thereto within ten days after it shall have been received in this kingdom, and before the same shall have been signed by any person here, to affix thereto an adhesive stamp denoting the duty chargeable thereon, and to cancel such stamp by writing across the same his name and the date when he shall so affix such stamp, and thereupon such charterparty shall be deemed to be duly stamped."

On the preamble of the bill,

Mr. Ayrton pointed out the growing necessity for a bill to consolidate the whole of the laws relating to the Exchequer, in consequence of the yearly alterations in the Stamp Acts. Under present circumstances, it was scarcely possible to find out the actual state of the law upon the subject without wading through innumerable clauses in various acts, and, therefore, he trusted that the Chancellor of the Exchequer would take into consideration the propriety of introducing such a bill on the assembling of the new Parliament.

The Chancellor of the Exchequer felt the force of what had been said, and thought it would be very desirable that they should have a consolidation of the Stamp Acts.

Sir C. O'Loghlen directed the Chancellor of the Exchequer's attention to the fact, that ships might be sold, assigned, or mortgaged, without making any return to the revenue by means of stamps, and the law even provided an admirable and cheap machinery for doing so. It was for the right hon. gentleman to consider whether the stamp duty should not be extended to the transfer of ships.

Mr. Scully complained that in Ireland, in transactions with regard to land, persons had to pay double stamp duty, as compared with the duty in England. In England they had to pay only a 10s. duty; in Ireland they had to pay an ad valorem duty besides. That double duty seriously interfered with the transfer of land in Ireland.

Mr. Haafield said, that with regard to settlements, a gentleman had written to him stating that, in addition to the 5s. duty on every 100l., he had also to pay 1l. 15s. for the deed.

The Attorney-General said, if anybody wished to have the decision of the commissioners with regard to the proper stamp to be put on the deed, he could go to them; and if he was not satisfied with their decision, he could go to the Court of Exchequer.

The Chancellor of the Exchequer said, if his friends furnished him with the particulars of the several cases, he would see what could be done.

The preamble was agreed to, and the bill was ordered to be reported.

#### LAW OF EVIDENCE, &c., BILL.

On clause 1,

Sir F. Kelly said, two exceptions of quasi civil cases had been inserted in Lord Denman's Act. With the first of these exceptions—cases for breach of promise of marriage—clause 1 of the present bill was intended to deal. He did not deny that considerable objection might reasonably be made to the examination of the parties to this class of action; but he thought that the proviso of the member for Leominster, which would provide that there must be a promise in writing, would go far to remove those objections.

Sir G. Bowyer was afraid the clause would lead to a good many marriages which would not be productive of domestic happiness. If the clause of the hon. member for Leominster should be adopted, he thought it would nullify the clause altogether.

Mr. Roebuck said the arguments of his hon. and learned friend against the clause were just those used against Lord Brougham's Bill, the merit of which, by the way, belonged not to Lord Brougham but to Jeremy Bentham. Who was the party most likely to be injured in these cases? Clearly the woman; the man was nearly always the deceiver. His hon. and learned friend seemed to think that every man who found himself alone with a modest woman would be in danger, and would be said to have promised marriage. Now, his hon. and learned friend did not know enough of women. There would always be the safeguard of a jury, and if a young woman said that his hon. and learned friend had made her a proposal when he was alone with her, no jury would believe that young woman on her oath. He repeated that the wrong was invariably done by the man; he did not believe in such an article as a designing woman. As to the proviso suggested by Mr. Hardy, that the promise should be in writing, that would be an alteration of the substantive law, and, if adopted, there would be very few valid promises of marriage whatever.

Mr. G. Hardy pitied the unfortunate man who ever defended an action for breach of promise, when persons like his hon. and learned friend were on the jury. He could not admit that men were always deceivers, and women never; and certainly juries did not deal out anything like equal justice between them. The other day a lady brought an action against a gentleman who was lame, and unable to take care of himself, and though her position would have been that of a nurse rather than of a wife, she recovered heavy damages for the loss of that position. In another case, a lady with 4000l. or 5000l. a year made a solemn promise of marriage to a gentleman, and when he, being jilted, brought his action for the damage he had suffered by losing the material comforts he supposed he was going to obtain, he was dismissed with a farthing damages, amid shouts of contempt.

Was this a reciprocal action, and if so, was it treated fairly by juries? He would treat these promises in the way which promises of a much less serious character were treated under the Statute of Frauds. Because people were apt to construe that into a promise which was never meant to be one, the Statute of Frauds required that certain promises should be in writing; and if there was any one class of cases in which this precaution became necessary, it was in cases where marriage was in question, and promises were extorted, or imaginary promises were framed, by mothers and sisters anxious for the match, out of innocent conversations. No doubt, juries very much resembled in feeling his hon. and learned friend (Mr. Roebuck). When a young and pretty lady was set before them as having been deluded, there was no holding them in. He remembered hearing an old gentleman, who had been a barrister in India, tell the story of a Circassian slave, who had murdered the master of a harem there. This counsel had to defend her. It was a bad case; but he said, "Put her in her best dress, the more transparent the better; set her opposite the jury, and I will answer for the result." And the result was exactly what he predicted. She had stabbed the man, but the jury pardoned the crime for the sake of the interesting woman they saw before them. So in the case of an action for breach of promise. A young and interesting woman would get damages; but if a man was ever so young and interesting, he got no damages, but had to pay heavy costs, and get scouted besides. For his part, he thought this action might well be abolished, for he did not believe in the broken hearts of young ladies, who, directly they got a dowry in the shape of damages, got somebody else to console them. If, however, you must have the action, why not treat it as a serious matter? Why should not these promises be placed on the same footing as promises under the Statute of Frauds? In a class of cases with which magistrates at petty sessions were very familiar, material corroborative evidence of the woman's statement was required, and the law was altered specially to enforce that, in consequence of the iniquities which had been perpetrated. The alteration which was proposed was not to create new evidence of an old kind; it created, in fact, an entirely new action, and if it were carried, a class of cases would come into the courts as actions for breach of promise of marriage, which were now settled before magistrates at petty sessions. He did not intend to oppose the clause; indeed, he should not vote upon it at all, but if it were carried, he should move the addition of the following proviso:—"Provided always, that no such action shall be hereafter brought, unless the promise be in writing, signed by both the parties." It was a mistake to suppose, that when a promise was made, the young lady must sit down on the spot, and write it out, and then call on the gentleman to sign it. This was not the case, nor was it the case under the Statute of Frauds. If the promise could be made out from any number of letters between the parties, that was sufficient.

The Solicitor-General agreed that this was a very exceptional kind of action. Why it happened he could not say; but his experience in courts of justice was, that in actions for breaches of promise of marriage the women had it all their own way, and the men had no chance. The lady was well got up, placed in a conspicuous place, and the attention of the jury directed to her, and, of course, she was generally in tears. If she were placed in the witness-box and cried under cross-examination, as they always did, it would be all over with the man. The jury, to shew their chivalry, their admiration for the fair sex, and their contempt for their own, would immediately return a verdict for her. If this amendment of the law were sanctioned, it would be found that a certain class of attorneys would come into court with a crop of actions for breach of promise, which no single man could stand against except he had the advantage of the hon. and learned member for Dundalk, and could protect himself by the vow of celibacy.

On the question that the clause as amended be agreed to, The committee divided, and the numbers were,—

For the clause	..	..	..	..	27
Against it	..	..	..	..	86
Majority	..	..	..	..	59

The clause was accordingly rejected.

On clause 2, providing that parties to any suit instituted in consequence of adultery might offer themselves as witnesses on their own behalf,

Sir F. Kelly said, that the clause allowed parties to offer themselves as witnesses, but there was no power given by it to compel them to come forward to give evidence. The law at present was full of anomalies and inconveniences, to remedy which this clause had been framed, and he hoped that it would meet with the approval of the committee. It was monstrous that a lady should have to sit in court, and hear herself accused of adultery, and circumstances urged against her which she could explain or contradict, did not the law prohibit her from doing so.

The Attorney-General said, the hon. and learned gentleman proposed to give a power of offering evidence to either party in cases of adultery, but not in the ordinary way, nor subject to the ordinary rules of evidence. The parties were to be competent, but not compellable, to give evidence. He must say that he looked with some apprehension at what would be the practical working of the clause. But for the existing anomalies, and the high authority of the learned judge who presided over the particular court where these questions were most frequently raised, he should have hesitated to accept such an alteration in the law of evidence. But, if the law was to be altered, why should it be in a manner that was without precedent? He would press that question upon the committee more particularly on the very ground which appeared to him most to favour the change. Under the law, as it stood, we had an anomalous state of things, that in causes not originally founded on charge of adultery, but in which charges of that nature arose collaterally, or by way of defence, the husband or wife was compellable to give evidence. If it should be determined to disregard the great accessions to the present gross scandals that would be likely to arise from making husband and wife enter the witness-box to give a history of their whole lives, at least they should put the law upon a footing that would be free from inconsistencies and anomalies. He could not consent to the words in the clause, "Shall be allowed, if he or she shall think fit."

Sir F. Kelly said the learned judge who had been referred to entertained a strong objection to compelling either husband or wife to prove his or her adultery. It was contrary to a fundamental principle of our law to make any person compellable to give evidence criminating himself. He, therefore, proposed a proviso to this effect:—"Provided always, that no person so competent shall be compellable to be called as a witness to give evidence in any issue which shall raise the question whether such person has been guilty of adultery."

Mr. Hunt asked how the hon. and learned member construed that proposition with the fifth clause, under which a person might be compelled in the course of his cross-examination to criminate himself.

Sir F. Kelly said that while a person would not be compelled by the bill to place himself in a position in which he would have to criminate himself, yet if he voluntarily tendered himself as a witness, he must submit to a cross-examination which might have that effect.

Mr. Ayrton thought the opinion of the committee ought to be taken on the clause and the proviso separately.

The proviso was then put and negatived.

On the question that the clause stand part of the bill,

Mr. Selwyn rose to move its omission. He did so for the reasons so well stated by the Attorney-General, and because he believed the clause, if adopted, would aggravate the scandals connected with these trials in the Divorce Court.

Mr. Malins on the same grounds opposed the clause. The scandals in the Divorce Court were already sufficiently great, but they would be infinitely greater if they had wives and husbands appearing there to swear against each other. As to persons having it in their own option to tender themselves as witnesses or not, if they refused to do so, would not that be construed as an admission of their guilt? The existence of the Divorce Court was one of the greatest public calamities.

Mr. Walter felt some difficulty as a layman in offering an opinion on a subject of that kind; but he must take leave to say that he thought the arguments urged against that clause were by no means satisfactory. In a question of that nature what they had to was, not whether more or less scandal or disgrace would be produced by the operation of that clause, but whether or not it would facilitate the ends of justice, and tend to prevent innocent persons from suffering cruelty and

wrong. These divorce cases were in themselves scandals, that was an evil inherent in their very nature, and it could not be helped.

The clause was then put and negatived.

The bill was then withdrawn, and the House resumed.

Monday, June 19.

#### CAPITAL PUNISHMENT COMMISSION.

Mr. Herbert wished to ask the Secretary of State for the Home Department when it was probable that the report of the Capital Punishment Commission would be presented to Parliament.

Sir G. Grey said he believed that the report was not yet ready, and was still under the consideration of the commission.

#### FORFEITURE FOR TREASON AND FELONY BILL.

In reply to Mr. C. Forster,

The Attorney-General said it would be impossible to proceed with the bill during the present session. He was anxious to give effect to the engagements which he had entered into on the subject last year, but the difficulties experienced with regard to the working machinery of the bill had been found too great, and it was now too late in the session to overcome them.

#### CONTRACTS FOR HIGHWAYS.—STAMP DUTY.

Mr. Trevelyan asked the Chancellor of the Exchequer whether contracts for the maintenance and repair of highways were liable to the stamp duty of 1*l.* 15*s.*; and, if so, whether he would consider the advisability of reducing the duty.

The Chancellor of the Exchequer said, there was some doubt as to the state of the law upon the subject; he thought, however, there was no reason why the contracts should be so liable. The Government were, therefore, of opinion that they should be put on a more favourable footing, and in considering the Inland Revenue Bill this evening, he should move a clause to the effect that they should not be chargeable with any other duty than the 6*d.* stamp duty.

#### PATENT LAWS.

Mr. Lowe asked the noble lord the chairman of the Patent Law Commission, what steps it was proposed to take with regard to the report of that commission.

Lord Stanley said the Patent Law Commission appointed three years ago was confined as regarded the scope of its inquiry. It was not a commission to inquire into the principle upon which the patent laws were founded, but simply into the working of the existing laws, and to suggest any amendments which might be made in the working of those laws. The report of that commission was before the House, and, as the House was aware, they had suggested many amendments in detail. But he was bound to say that, having had the subject under consideration now for nearly three years, having heard a great variety of evidence upon it, and being compelled to consider it in all its bearings, the effect of that inquiry on his mind had been to raise a very serious doubt as to the utility of patent laws at all. He was not the only member of the commission upon whom that effect had been produced. His hon. and learned friend the member for Belfast (Sir H. Cairns), who was not now present, had authorised him to say that in that expression of opinion he entirely concurred, and he might say the same for the hon. member for Bradford. ("Hear, hear," from Mr. Forster). That being the case, he should feel some difficulty in proposing to the House, either in the present or any future session, those amendments of detail which had been embodied in the report of the commission. The preliminary question, in his opinion, for the House to try was this, whether they meant to have a patent law at all. If the House came to a decision that they intended to retain the patent law, then he should confidently recommend the amendments which the commission had proposed as better qualified than any others in their opinion to meet the inevitable inconvenience which arises from the continuance of the law. But the House ought first to have an opportunity fairly and deliberately of deciding upon that larger question which had not been submitted to the Patent Law Commission, namely, whether it was expedient that patents for inventions should continue to be a part of the law.

The vote of 200,000*l.*, the proportion of the total sum of 703,000*l.*, required for this year for the purchase of lands

and houses for a site for the new courts of justice and offices, was agreed to.

*Tuesday, June 20.*

# COUNTY COURTS EQUITABLE JURISDICTION (JUDGES' SALARIES).

The House went into committee.

Mr. F. Peel proposed a resolution to enable the Treasury to pay out of the Consolidated Fund an addition of 300*l.* a year each to the salaries of county court judges in England.

Mr. Augustus Smith objected to the proposed increase, and said it had been found by a return that the judges whose salaries had been raised to 1500*l.* had not been the most deserving so far as their duties were concerned. There were nineteen judges who sat in their courts only from 150 to 200 days in the year, and thirty-five who sat only from 100 to 150, and one who did not actually sit 100 days. If this increase in the salary should be made, those holding other legal appointments of a similar character would be making application to be placed on the same footing. He feared also that the measure would be detrimental to the profession itself.

Mr. Longfield regretted that the old principle of fees had not been retained, because some judges would now be getting 300*l.* a year for hearing ten extra cases, while others would have perhaps 300 additional cases.

Mr. F. Peel said, there was a great objection to the payment of county court judges by fees. It would be provided that any judge appointed hereafter should not have more than 1500*l.* a year. The highest sum now was 1600*l.*, and this 300*l.* would raise it to 1800*l.*

Mr. Ayrton.—It should be understood, that if the jurisdiction in bankruptcy were extended to the county court judges, as recommended by a select committee, no further claim for an increase of salary should be made.

Mr. Henley said, if the House were going to give additional duties, for which a sum equal to one-fourth of the income in many cases was to be paid, then it might be assumed that only three-fourths of the time of the county court judges was at present occupied. He urged that some revision should be made with reference to the imprisonment of poor persons for debt in the ordinary gaols for criminals, which richer persons took care to avoid.

The Chancellor of the Exchequer said, the right hon. gentleman was far from correct in assuming that the time of the county court judges was only three-fourths occupied. The duties now to be added would, it was thought, be equal to one-fourth of their present labours. The remuneration to the civil service of this country was generally liberal, and with respect to the legal profession he thought it was more than liberal, and very large.

Sir C. O'Loughlin thought a source of income should be created by a system of stamp duties in county courts, such as existed in Ireland, where the county courts were in consequence a much less expense to the country than in England.

After a few words from Mr. Lewis, the resolution was agreed to, and ordered to be reported.

The House then resumed.

On the motion of Mr. F. Peel, the order for going into committee on the Ulster Canal Transfer Bill was discharged, and the Trusts Administration (Scotland) Bill and Record of Title (Ireland) Bill read a third time, and passed.

## INLAND REVENUE BILL.

Some amendments in this bill were considered, and agreed to.

*Wednesday, June 21.*

## MERCHANT SHIPPING DISPUTES BILL.

Mr. Denman, in moving the second reading of this bill, explained that it had been drawn up under the auspices of the Newcastle Chamber of Commerce, and had been approved at a large meeting of delegates from the associated chambers of commerce throughout the country.

Mr. Headlam corroborated the statements, that the bill had originated with the Newcastle Chamber of Commerce, and had received the approval of the associated chambers of commerce throughout the country.

Mr. M. Gibson admitted that the subject was one which was deserving of the fullest consideration of the Board of Trade. If, however, his hon. and learned friend would allow the matter to rest for the present session, he would undertake that it should receive during the recess the fullest consideration.

After some observations by the *Solicitor-General*, Mr. Moor, and Mr. Cave, the order for the second reading of the bill was discharged.

The Railways Clauses Bill was, after an animated discussion, withdrawn.

The report upon the County Courts Equitable Jurisdiction (Judges Salaries) was brought up and read.

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## THE JURIST.

LONDON, JULY 1, 1865.

THE imperfection of that branch of our law popularly known by the name of "magistrates' law" (using that term as applied to the branch of law, and not to the actual decisions of magistrates in quarter or petty sessions in applying the law), are manifold, and are well known to all those whose practice makes them conversant with the intricacies, inconveniences, and absurdities which are the natural offspring of such imperfection. To one of the sources of this imperfection, with its consequences, we wish to draw attention; and we wish to point our notice of the blot by a late notable example. The source of imperfection to which we wish in our present article to direct our readers is, that system of legislation by which appeals are given, either from the decisions of magistrates or in cases which in due course would come before them, to any of the Superior Courts at Westminster, without any further appeal in the matter. The consequence of this system is, that a conflict of cases often arises, for the following reason:—Many points arising on appeal are, in the nature of things, intricate, open to much doubt, difficult of solution, and (with all respect to the learned judges) refer to matters somewhat out of the general beat of the practice of many of those on the bench, and therefore, inevitably, among the judges there must arise a difference of opinion respecting them. An appeal comes before one court, and that Court, often with great difficulty and doubt, not unfrequently with a difference of opinion between the members of the court, gives a particular decision. The same case, or one which as a logical consequence would follow it, arises again, and instead of an appeal to the Court which has given the previous decision, an appeal is made to one of the other Superior Courts. The case comes on for argument; the former decision is candidly pointed out by the counsel, who would be out of court if it were to be received in the ordinary way, as a decision by a Court of co-ordinate jurisdiction; but the following doctrine is prayed in aid—the doctrine, that though where a decision is open to revision by a higher tribunal, it is a binding authority on co-ordinate Courts; yet, where this power of revision is wanting, each Court is entitled to act on its own opinion, and, after a careful and respectful consideration of the former decision of another co-ordinate Court, to give a decision directly adverse to it, should their opinion be different. This doctrine is acknowledged, accepted, and acted on. The consequence is, that on some points we get decisions standing in our reports, sometimes directly and totally adverse to each other, sometimes distinguished by distinctions which are really nothing more than evasions, the offspring of inter-judicial courtesy, sometimes founded on reasonings which conflict at every step, cannot be reconciled, and, if fairly followed out, must be productive in various other cases, and applications of them, to diametrically opposite conclusions.

A case has lately arisen, "to point our moral and adorn our tale;" and we especially draw attention to it, as it affects a most important branch of our magisterial law—the law of poor rates, and involves principles which lie at the very foundation of our rating system, and may be productive of the most seriously different results, and the most disastrous and far-spread litigation, if persons attempt in different courts to enlist the two divergent decisions to which we are now about to draw attention. In the year 1854 the case of *Allison v. The Churchwardens, &c. of Monkwearmouth* (23 L. J., M. C., 177) came on on appeal before the Court of Queen's Bench. The case was as follows:—A brewery and premises, together with the goodwill and trade of certain public houses, subject to the rents theretofore received for the said public houses, were leased for seventeen years to A., yielding, and paying for and in respect of the brewery and premises, the clear yearly rent of 300*l.*, and for and in respect of the fixtures, &c., the yearly rent of 30*l.*, and for and in respect of the goodwill and trade of all the public houses, the yearly rent of 150*l.* A. occupied the brewery and premises, and the public houses, thirty-three in number, which were situate in different places apart from the brewery, were let by A. to separate tenants, at rents about equal to the amount paid by A. to his landlord. The tenants of the public houses, as they were bound to do under an agreement, purchased from A. at the brewery all the malt liquors, &c. consumed in their houses, and each tenant was separately rated to the poor rate. Without the restriction as regards the purchase of malt liquors, &c., a higher rental would have been given for the public houses. It was held by Campbell, C. J., and Crompton, J., first, that the 150*l.* paid for the goodwill of the public houses was to be taken into account in estimating the rateable value of A.'s occupation of the brewery and premises; secondly, that A. was not entitled to claim a deduction equal in amount as an outgoing necessary to the obtaining by the brewery of the profit derived from the trade of the public houses. Erle, J., however, held a different opinion. The two learned judges who constituted the majority of the Court held, that the case fell within the two well-known old cases as to the soke-mill and the canteen; while Erle, J., considered that the former of those cases depended on the fact, that the millstone was a legal appurtenance to the mill, and not the creature of a mere temporary personal contract, as in the case before him; and that the decision in the latter case turned on the advantage of situation, and was so distinguishable.

Quite lately the following case arose:—Certain breweries had public houses bound to them by contracts similar to those in *Allison v. Monkwearmouth*, some of such public houses being in the same parish as the brewery to which they were attached, some not. The overseers of the parish in which the breweries were situated rated the breweries and public houses without reference to their contracts; but the assessment committee of the union in which the parish was situated (where the matter came before them, under the Union Committee Assessment Act of 1861)

raised the rating of the breweries in consequence of the contracts, without, however, touching the rating of the public houses. The question of the propriety of this course was brought before the Common Pleas, where Erle, C. J. (the dissentient judge in the former case in the Queen's Bench), presided, having been transferred from the Queen's Bench in the interval. The case was heard before the Chief Justice, and Justices Byles and Smith. Here, again, a division of opinion occurred, resulting in a decision exactly the reverse of that come to in the case of *Allison v. Monkwearmouth*—the Chief Justice and Justice Smith thinking that the overseers were right, whilst Justice Byles thought they were wrong; and in giving their decisions, the two former made the following observations on *Allison v. Monkwearmouth*:—The Chief Justice said—"I now proceed to the case of *Allison v. Monkwearmouth*. The facts of that case seem to me to be materially different from those here stated, and the statute here to be construed is different from the statute there in question, and therefore it is not necessary to decide whether an opinion given by a Court, by way of advice, from which there is no appeal, is as binding on co-ordinate Courts as a judgment would be, where the same question is sent up to a second Court for its opinion. I should think not. It seems to me that each Court is in such case original, and bound to give its own judgment, just as, on a motion for a writ of habeas corpus, each tribunal must give its own decision, without being swayed by other tribunals. But, as already observed, it may be that we are not called on here to say that any former case should be overruled.

"In *Allison v. Monkwearmouth* the title deeds and leases were produced by the brewer, and the facts relevant to the rating of the brewery for the supposed profit from the tie were taken therefrom. Those facts were, that Sir Marmaduke Williamson was owner of a brewery, of which the rateable value by itself was 350*l.*, and thirty-three public houses, of which the rateable value is not given. These public houses he had let, with contracts to take beer, at moneyed rents, amounting in the aggregate to 150*l.* He then leased to Allison for seventeen years the brewery, with the goodwill of these public houses, as it is called, subject to the payment of the rents theretofore received by Williamson—that is, yielding, in respect of the brewery and fixtures, 350*l.*, and in respect of the public houses, 150*l.* This sum of 150*l.* thus described as rent is found to have been in substance the rents of the public houses collected by Allison for Williamson during the existing leases. When the tenancies changed, Allison let to the new tenants, and continued to receive during the term the same moneyed rent from those public houses, amounting to about the sum of 150*l.* per annum, which he paid to Williamson, under the above-mentioned covenant. The lease of the goodwill of the public houses is thus shewn by the case to have been in effect a lease of the public houses. The Court held, that Allison was liable to be rated for this sum of 160*l.*, being the amount of the rents so received. The case also finds that all tenants were assessed for their public houses, but the value

is not stated. These being the facts, the judgment affirming the rate on the brewer for the amount of rents collected by him, and paid over to the superior landlord, has the singular effect of holding that a rent collector may be rateable for the amount of rents which he collects, where the given relation of brewer and publican is found to exist.

"The case is also singular in this—that although, as a general rule, the province of the Courts here is confined to deciding on rateability only, and does not extend to deciding on amount, yet the Court, in thus holding the brewer liable to be rated for the rents collected, refused permission to go into the question of the cost of the production of the supposed rateable value of 150*l.*, and assumed that the covenant to pay that sum as rent of the brewhouse was conclusive of rateable value, although the deed shewed it was rent collected. The case also found that Mr. Allison rented other public houses, not of a brewer landlord, which he sublet to publicans with the contract for beer. The notion of rating him for the rent he received from those publicans seems not to have been attempted; but if he was liable for those he rented of Williamson, it is difficult to say why he was not liable for those rented of others. If the attempt had been made to rate him for every public house under contract with him to take beer, it would have been the rating of a profit of trade; and yet the profit from beer supplied to Williamson's public houses was the same profit of trade as that from beer supplied to other public houses.

"Furthermore, there is a sound distinction between that case and the present, on the ground that the assessment lists relate to the whole union, and all the tenements are at once to be assessed. Under the former acts, before the Union Assessment Act, there was a defect in deciding appeals on rates, because only one tenement was the subject of the judgment at a time; and in apportioning the rateable value of two or more portions of the same rateable subject in two or more parishes, the injustice of doubly rating the same rateable subject might be inflicted in the apportioning process, unless all the portions were disposed of at once. Accordingly, in *Allison's case*, although it appeared that the tenants of the public houses were rated as well as the tenants of the brewery, yet the Court had no power of inquiring, and did not inquire, whether the public houses were rated at their full value, and whether the rating Allison for the rents which they paid to him, were not in reality a double rating of these public houses, that is, once on the tenant and again on Allison.

"Here the overseers have rated all the public houses as well as the brewery according to the principle of the Assessment Acts; and according to those principles the publican would have to pay a rate both on the lower money payment and the higher beer charge which he pays to the brewer, his landlord, under the contract.

"There is no suggestion that any further value is created by this relation of landlord and tenant. If the suggestion was made, it certainly could not be ascertained without taking an account of the profits of

the beer trade, involving an account of losses by insolvency and otherwise; and so it would be made apparent that it was an attempt to rate a profit of trade.

"If the doctrine is established, that the supposed profit from a publican tenant, taking beer by contract, is rateable upon the brewer, the question would arise, why the same profit arising by reason of a publican debtor contracting to take beer from the brewer creditor should not also be assessed. The tie is created as well by a loan secured by a bill of sale as by a covenant in a lease, that is, unless the publican can pay off the loan, he may be broken up, as it is called, at any time; and yet the attempt to make such a profit of trade rateable has not been made. It is also clear, that a brewer differs, not in respect of this liability, from a butcher, a baker, or the like. If the brewer landlord is to be rated as Allison was, other tradesmen landlords influencing custom by letting retail tenements with contracts for custom, ought to be rated; but such an item of rateable value has never been recognised.

"For these reasons, the case of *Allison v. Monkwearmouth* seems to me distinguishable from the present. In the judgment delivered by me in that case, I endeavoured to distinguish the right of the occupier of a soke-mill, derived from immemorial custom to the servitude of all within the soke, and the right of the occupier of a canteen placed in a populous locality, from a right derived under such a contract as that in *Allison's case*. I refer to the reasons there given, which appear to me to have more force when applied to an assessment list, fixing the rateable value of each rateable subject in the union on the principles above explained; and I will not increase the length of this judgment by repeating what I am reported there to have said.

"I will only add, as to the soke-mill, that the prescriptive rights of the miller of that mill to the multure from the inhabitants of the soke, is a realty affecting the fee-simple of the whole locality, and the immediate profit fixed by the custom is subject to no risk of trade, if the miller may take his toll in kind; whereas the right of a landlord to sue on the contract for taking beer, is a personalty affecting only the persons of the contracting parties; and the profit therefrom varies in proportion to the skill of the contracting parties, and is subject to all the risks of trade from insolvency, dishonesty, and the like. If this be correct, the profit to the mill from the prescription is rateable, and the profit to the brewer from the contract for beer is not."

And Smith, J., said—"The facts of the case of *Allison v. Monkwearmouth* differ in some respects from the present, and the question of reducing the rateable value of the public houses was not in that case before the Court for decision. Here we have to decide that question, and to decide it upon the provisions of the recent statute. Notwithstanding the respect which I feel for the opinion of the three learned judges who formed the majority of the Court, their decision, which could not be appealed from, ought not, I think, to be conclusive in this case."

With respect to the preferability of the two decisions, we for our present purpose have nothing to do.

We will only remark on those portions of the judgments which we have given, that none of the elaborate distinctions of the Chief Justice were taken by him in *Allison v. Monkwearmouth*, and that, by the Union Assessment Committee Act, the old principles of rating are in terms preserved.

And this being so, we cannot but think that we here have a good illustration of the defect which we are reprobating, and the desirability of a remedy. This remedy may be provided, either by giving an appeal to the Exchequer Chamber, or by restricting the appeals to some one particular court, as in the case of appeals from the decisions of revising barristers; and we leave to our readers now to consider which of these two courses is the proper one.

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MR. THOMAS COLLETT SANDARS, of Lincoln's-inn, has been appointed to succeed the late J. G. Phillimore, Q. C., as Reader on Constitutional Law and Legal History to the Inns of Court. The profession, and through them the country, are deeply interested in the administration of the important trust which the Benchers of the Inns of Court have delegated to the Council of Legal Education. The office of reader is practically, though not in form, for life, and the duty of the Council is obviously to make a safe appointment if they can. If all the candidates are untried, the selection will necessarily be speculative, and must be made upon the fairest estimate and balance of their known performances and their testimonials. But, if among them there is one who has devoted himself to, and gained special distinction in, the very subject in question, and who is otherwise unobjectionable, the Council, acting on behalf of the profession and the public, have no right to pass him over, in favour of any one who is merely recommended as likely to do well. Now all that is known of Mr. Sandars is, that he has respectably edited the Institutes of Justinian—a subject as remote from English Constitutional Law as any that can engage the attention of a lawyer. We have nothing to urge against the appointment of that gentleman to the chair of Constitutional Law, except the facts—most material in an appointment for life—that his fitness for it remains to be proved, and that there was another candidate whose fitness was unquestionable and notorious. Instead of taking the chance of making a lucky hit, the Council had the opportunity of selecting a gentleman, certainly as well qualified in respect of general attainments, character, and experience in academic tuition, but who had also established his claim to this particular appointment, by long and laborious study of English Constitutional Law and Legal History. We mean of course Mr. Homersham Cox, whose Treatise on the Institutions of the English Government has a European reputation, and is known not only as a most learned and elaborate, but also as a most readable book—the very book which an accomplished reader on Constitutional Law would desire to put into the hands of his

more advanced pupils. We know that we are far from being singular in thinking, that in this instance the Council appear to have acted as if they were dispensing patronage rather than discharging a public trust.

### Imperial Parliament.

#### HOUSE OF LORDS.—Tuesday, June 27.

The Inland Revenue Bill was read a second time.  
The Carriers Act Amendment Bill and the Foreign Jurisdiction Act Amendment Bill passed through committee.

#### HOUSE OF COMMONS.—Thursday, June 29.

##### COUNTY COURTS EQUITABLE JURISDICTION BILL.

On the motion that the House resolve into committee on this bill,

Mr. Ayrton moved, that it be an instruction to the committee to assimilate the Sheriff's Court of the city of London in all respects to a county court. He said that the royal commission in 1859, and a committee of that House in 1861, reported against the maintenance of this special jurisdiction in the city of London. It was difficult to conceive anything more inconvenient or extravagant than the present state of things. While county courts were set up in all directions to administer a uniform system of procedure, there existed in the heart of the metropolis a court of different procedure, and of an exceptional character, and an actual profit was made by the city of London from fees in the administration of justice in that court. That profit formed an accumulated fund, available, probably, for those entertainments in which the corporation delighted.

The Attorney-General could not agree to the proposed instruction. It would be making the bill the occasion for a contest between the Government and the city of London, which would preclude the hope of passing the measure in the present session.

Mr. Ayrton, not wishing to endanger the passing of the bill, withdrew his motion.

The House then went into committee on the bill.

On clause 1, giving jurisdiction in equity to county courts in certain suits and matters relating to amounts or values not exceeding 500*l.*,

Sir C. O'Loughlin said, he entertained great doubts whether the jurisdiction proposed to be given to county court judges was not far too great, and whether it would not tend to clog the working of their courts, thereby injuring, rather than benefiting the public interests. Were it not so near the close of the session, he should have felt disposed to move that the maximum of 500*l.* should be reduced to 200*l.*

Mr. Cheetham supported the clause as it stood, and, indeed, thought that the limit might have been safely fixed at 1000*l.*

Sir M. Farquhar also approved the clause.

The Attorney-General said, that the extent of the jurisdiction proposed to be conferred by the bill had been carefully considered, and he believed it might safely be intrusted to the judges of these courts.

Mr. Murray hoped that the limit would not be fixed below 500*l.*

After a few words from Mr. Augustus Smith,

Sir C. O'Loughlin explained, that he did not question the competency of the county court judges, but feared that these new duties would interfere with the small cause business.

The clause was then agreed to, as were also clauses 2 and 3.

Clause 4 (relating to the Sheriff's Court) was expunged.

Clauses up to 13 were agreed to.

Upon clause 14,

The Attorney-General proposed an amendment to allow the county court judges, with the sanction of the Lord Chancellor, to select any other month than that of September for their annual vacation; which, after discussion, was agreed to, as were the remaining clauses.

In answer to Mr. Murray,

The Attorney-General said he would, before the report,

consider the propriety of granting a direct appeal to the superior court. He also proposed a clause instead of clause 4, giving to the City Small Debts Court jurisdiction in all matters over which a metropolitan county court has jurisdiction, which, with an addition moved by Mr. Murray, requiring that the judge and officers of the city court shall conform to the rules and orders made under the authority of this act, was agreed to.

Colonel Wilson Patten moved a clause to follow clause 18, reserving the right of appeal to the Court of Chancery of the County Palatine of Lancaster.

Mr. Cheetham, Mr. Bazley, and Mr. Hadfield supported the clause.

The Attorney-General said that the bill did not interfere with any of the existing rights of the Court of Chancery of the County Palatine of Lancaster. The proposal would deprive one part of the country of a right of appeal enjoyed in other portions of England.

After some remarks by Mr. C. Turner and Mr. Ayrton,

The Attorney-General said he should not object to the clause if words requiring the assent of both parties were introduced.

The clause, with the modification suggested by Mr. Ayrton, was eventually agreed to, as were also clauses to the effect, that the registrar of the Bloomsbury County Court of Middlesex, not being an attorney or solicitor, be entitled to retire from his office with compensation; that the act 9 & 10 Vict. c. 95, and any act amending or altering the same should be construed together; and that the salary of T. Rodgers, Esq., as joint registrar of the county court of Sheffield, be 700*l.* a year.

The preamble was then agreed to, and the bill passed through committee.

Monday, June 26

##### INLAND REVENUE BILL.

This bill, as amended, was considered, and words limiting the right of appeal were added to the 25th clause.

##### COUNTY COURTS EQUITABLE JURISDICTION BILL.

This bill, as amended, was likewise considered.

Mr. Henley said the power of commitment under this bill was unlimited, and as the position of county court debtors at present was almost a final one, he hoped the right hon. gentleman the Secretary of State would take care that the operation of the measure was surrounded with proper safeguards.

Sir G. Grey was not certain that all the persons committed under this bill would be in the position of county court debtors, though some undoubtedly would be. He would look into the matter, however; the treatment, it was right to add, was defined by rules made by the Home Office, and not under an act of Parliament.

On clause 20, which imposed upon the judge in certain cases the duty of settling the terms of appeals,

Mr. Murray stated objections which he entertained to this provision, and moved that it be struck out.

Mr. Malins also thought this was an attempt to reintroduce a pernicious and abolished system. The same practice existed formerly in bankruptcy, and he had seen two days spent before the judge in an attempt to settle the terms of an appeal.

The Attorney-General, in deference to the opinions which had been expressed, was quite willing to allow the question of appeal to remain at large, and see how the system worked.

Clause 20 was then omitted, and the remaining clauses were agreed to.

The Poor-law Board Continuance Bill, as amended, was considered.

##### RAILWAY DEBENTURES, &c. REGISTRY BILL.

On the order of the day for the second reading of this bill, Lord Naas said that the bill had come down from the Lords; but as it appeared that it would meet with considerable opposition in that House, its promoters had no wish to proceed with it during the present session.

The order of the day was then discharged, and the bill withdrawn.

## PUBLIC-HOUSE CLOSING ACT (1864) AMENDMENT BILL.

The Lords' amendments to this bill were considered, and agreed to.

## MORTGAGE DEBENTURES BILL.

The Lords' amendments to this bill were considered, and agreed to.

Tuesday, June 27.

The County Courts Equitable Jurisdiction Bill was read a third time, and passed.

Mr. Longfield, on moving the adjournment of the House, called attention to the report of the committee on the Leeds Bankruptcy Court, observing, that he considered it to be his painful duty to bring this grave matter before the House. After some preliminary remarks upon the Edmunds case, he proceeded to detail the circumstances of the Leeds case, as developed in the report of the committee, remarking upon the discrepancies it indicated in the evidence, and especially the extraordinary and hopeless contradictions between Mr. Miller and the Lord Chancellor, and upon the singular admissions made by the latter, the keeper of the Queen's conscience. He complained of the stain upon the administration of justice by the proofs of the highest officer of the Crown having connived at the grant of pensions to improper objects, and that such a person should still be Lord Chancellor. He concluded by putting certain questions to the Attorney-General.

The Attorney-General, after adverting to the difficult position in which he was placed, observed that the evidence in the case was not yet before the House; that when it was, and not till then, the House would be in a condition to form an opinion upon it, and those who had to meet the case would have the necessary materials for their defence. He complained that Mr. Longfield, who had drawn his facts from the report of the committee, did not adopt the conclusions of the committee, who had acquitted the Lord Chancellor of everything except haste and want of caution. He pointed out facts which shewed that his Lordship could have had no improper motive in what he had done, and he censured the spirit in which Mr. Longfield had brought the matter before the House. In reply to the inquiries put to him, he stated the course which the Government deemed it to be their duty to take. They would wait for the evidence, and lay it before the law officers of the Crown, in order to ascertain whether there were sufficient grounds for proceeding against any of the parties for corruption.

Mr. Gathorne Hardy thought the Lord Chancellor had, upon his own shewing, grossly neglected his duty, and that the House was justified in noticing the case thus early.

Mr. E. Egerton deprecated a premature discussion of the subject, and urged the speedy publication of the evidence.

The Lord Advocate complained of the manner in which this matter had been brought under discussion, and of the groundless charges insinuated against the Lord Chancellor, explaining some of the circumstances which had been pressed against him. The Lord Chancellor, he said, had suffered under imputations which, so far as the purity of his motives was concerned, were most unjust.

Lord Cranbourne, Mr. Denman, Mr. Hennessey, Mr. Ayrton, Sir L. Palk, and Mr. Scully continued the discussion upon incidental points.

Lord Palmerston said, he had listened with pain to the speech of Mr. Longfield, who had not given the Lord Chancellor fair play in his citations of facts. He was pained to hear the bitterness he had thrown into his invectives against the Lord Chancellor, and he complained of the manner in which this discussion had been raised without proper notice.

The motion for adjournment was negatived.

In reply to a question,

Lord Palmerston said, he thought nothing need keep Parliament sitting beyond Thursday week.

Wednesday, June 28.

On the order for the second reading of the Capital Punishments within Gaols Bill, Mr. Hibbert stated that, as the report of the commission on the same subject had not yet been issued, he should withdraw the bill.

The Tests Abolition (Oxford) Bill and the Bank Notes Issue (Scotland) Bill were also withdrawn.

The Clerical Subscription, the Turnpike Acts Continuance,

the Colonial Docks, and the Marriages (Lambourne) Bills, were read a third time, and passed.

The Lords' amendments to the following bills were agreed to:—Prisons (Scotland) Act Amendment, Procurators (Scotland), Partnership Amendment, Post Office (Additional Site), Small Benefices (Ireland) Act Amendment, and Locomotives on Roads Bills.

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# THE JURIST.

LONDON, JULY 8, 1865.

THE session of Parliament of 1865 has been unusually barren in the matter of law reform. Attempts have been made to alter and amend the law by the introduction of several bills; but from whatever cause, whether the energies of the Legislature has been impaired in sympathy with its approaching dissolution, or whether the measures proposed are not urgently demanded, and were, therefore, not pressed beyond the walls of Parliament, certain it is that there has been little law legislation, and even those bills which have become law, such as the County Courts Bill, have been so mutilated in their passage through the House as hardly to be recognized by their framers. There is, however, one exception to these remarks, though even that is rather an amendment in process than any substantial change. The act, intitled "An Act for amending the Law of Evidence and Practice on Criminal Trials," which received the royal assent on the 9th May, but the most important clauses of which did not come into operation until the first of this month, is a very important measure affecting, as it does, all criminal courts, which, although regarded by the profession in some sense as less important, yet are of the greatest importance to the public, and indeed to the profession as part of the public.

The practice and evidence on the trial of pleas of the Crown differed from that in civil actions in many respects, but the preamble of this act recites, that it is expedient that the law of evidence and practice on trials for felony and misdemeanour, and other proceedings in courts of criminal jurisdiction, should be more nearly assimilated to that on trials at Nisi Prius. At common law, and until the passing of the 7 Will. 3, c. 3, it was a settled rule that no counsel should be allowed to a prisoner upon a trial for treason or felony, unless some point of law arose to be debated; and Lord Coke, in the 3rd Institute, gives as a reason for this, "Because the evidence to convict a prisoner should be so manifest as it cannot be contradicted." It was the custom, however, even in these days, for judges at criminal trials to allow counsel to instruct a prisoner as to what questions to put to the witnesses. The stat. 7 Will. 3, c. 3, provided, that in cases of treason a prisoner might be defended by counsel not exceeding two, but it was not till passing the stat. 6 & 7 Will. 4, c. 114, that the old rule on this subject at the trials of felonies and misdemeanours was set aside, and it was by that act provided that all persons tried for any felony, and all accused persons, and in cases of summary convictions, may make answer by their counsel, or in courts where attorneys are allowed to practice as advocates, by attorney. This statute brought the practice to that which existed until the first of this month, when the 28 Vict. c. 18, came into operation, the practice being, as is perfectly well known, for the counsel for the prosecution to state the case against the prisoner, and then to examine the witnesses in support of the indictment. At the

close of the case for the prosecution, since the passing of the 6 & 7 Will. 4, c. 114, the counsel for the prisoner addressed the jury, and, if he thought fit, called witnesses; and if he exercised his right to call witnesses, the counsel for the Crown had a right to reply on the evidence. This right, however, has been seldom exercised if the witnesses called for the defence are only witnesses to character. Now, however, by the provision of sect. 2 of the new act, the practice at a trial in a criminal court is assimilated to that in a civil court. That section provides, that "if any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel, whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanour, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening, or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded, to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present." It cannot be questioned that there are a class of criminal trials where this alteration in the law of proceeding in the trial of felonies and misdemeanours will be very beneficial. It occasionally happens that there is a real and substantial answer to a charge on the merits, even when it has proceeded so far as to trial. It sometimes happens that there is an answer in point of law to a charge of felony or misdemeanour; but it is difficult to say how, when the defence arises on the law, the ends of justice will be benefited. But in the great number of cases, as is well known to any practitioner who has frequented criminal courts, there is really no answer to the charge; the only question being, whether the case for the prosecution is made out sufficiently to satisfy the minds of twelve reasonable men. We have said above that it is not usual to exercise the right to reply where the counsel for a prisoner only calls witnesses to character. It is, however, usual and necessary to cross-examine such witnesses; for it frequently happens that the witness, although speaking the truth, has known nothing of the accused for so long a time previous to the commission of the offence charged, as to amount to no evidence of character; and where such witnesses are called, it may be necessary to point out to the jury the fact, that the evidence is of no value; and this counsel may do

in reply. The act provides, that the case for the defence is to be opened by counsel, but counsel for a prisoner will often find it difficult to obtain materials for a speech, except a general comment on the case for the prosecution. The efforts of counsel are principally directed to endeavour to discover some flaw in the case for the prosecution. Probably, excepting the summing up of counsel for the Crown, the practice will remain much the same as at present, because counsel who have been in the habit of appearing for prisoners are well aware how dangerous it generally is to call witnesses on behalf of prisoners. We need only refer to the late trial of "Müller" for murder, at the Central Criminal Court, where the counsel could hardly have abstained from adducing the evidence set up for the prisoner, yet, in fact, it rather assisted the case for the prosecution. At all events, the counsel for the prosecution will have the right, and will probably generally exercise it, to make two speeches. Probably a right to reply in the strict sense will, as now, rarely be given. Sect. 3 of the act provides, that a party shall not be allowed to impeach the credit of his own witness, by general evidence of bad character, but he may, if the judge shall be of opinion that the witness is adverse, either contradict him, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present statement; but before this can be done the witness must be referred to the particular circumstances when he made a different statement, and he must be asked whether he did make such statement. The question whether an inquiry into the general character of a witness should be restricted to his reputation for veracity, or might even be in general terms, involving his entire moral character, was not definitely settled; but now in a criminal proceeding it is clear that such inquiry cannot extend to the witness's general character, but either party may, by leave of the judge, call other evidence to contradict even his own witness, having first called the attention of such witness to the particular occasion when he made the statement alleged to be inconsistent with his present statement. Sect. 4 gives the opposite party, in cross-examining a witness, the same power of calling other witnesses to contradict such witness, having first called such witness's attention to the particular circumstances under which the supposed contradictory statement was made. It would manifestly have been most unjust to contradict a witness by the evidence of another witness, until his memory had been called to the particular circumstances under which he made a different statement. Indeed, in practice it might often be a waste of time to call another witness, when, if explained to the witness before the Court, he might state circumstances reconciling the two statements. Sect. 5 provides, that a witness may be cross-examined as to previous statements made by him in writing, or which have been reduced into writing, relative to the subject-matter of the indictment, without such writing being shewn to him; but if it is intended to contradict such witness by such writing, his attention must first be called to the parts of the writing which are to be used to contradict him.

This is a material alteration in the mode of contradicting a witness's evidence, because in *The Queen's case* (2 B. & B. 289), which has ever since been an authority upon this subject, it was held, that in cross-examining a witness, you cannot state to the witness the contents of the writing, and then ask him whether he ever wrote such a statement; but you must shew him the writing, and ask him whether it be in his handwriting, and if he admit it, you may give it in evidence; but if he deny that he wrote it, you cannot go further. The ordinary way in which this point arises is, when the witness had made a different statement before the magistrates; but it was one of the express conclusions come to by the judges after the passing of the 6 & 7 Will. 4, c. 114, that a prisoner's counsel, in cross-examining a witness, could not cross-examine as to what he had said before the magistrates; but that the deposition must be put in evidence, and read, and that then the counsel for the prisoner might proceed with the cross-examination of the witness as to any contradiction or variance. It would seem that, under the new act, it will only be necessary to call the attention of the witness to the previous statement or deposition, and then to cross-examine him as to any variance. This will be a material gain to the defence, because it will not be necessary to make the statement evidence for the prisoner, and thereby give the counsel for the prosecution a right to reply. Formerly it was held, that a question put to a witness for the purpose of impeaching his character could not be put, unless directly material to the issue; at all events, several old dicta shew that a witness was not bound to answer such a question; and Lord Ellenborough is reported, in *Millman v. Tucker* (Pea. Add. C. 222), to have said, that a witness was not bound to state whether he had been sentenced to imprisonment in a house of correction; but now, by sect. 6 of the new act, a witness may be questioned as to whether he has been convicted of felony or misdemeanour, and if he denies, or does not admit, the fact, or refuses to answer the question, it shall be lawful for the cross-examining party to prove such conviction. Sect. 7 provides, that "it shall not be necessary to prove by an attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto." Sect. 8 provides, "that comparison of any disputed writing with writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses; and such writing, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute." It may be a question whether this will be permitted where, as in forgery, the genuineness of the writing is the very issue to be tried. These six sections are, in fact, only an application of the sects. 22 to 26, inclusive, of the Common-law Procedure Act, 1854, to the procedure and practice in criminal courts. They have been found to work well in civil courts, and it is only the jealousy with which any attempt at change is introduced into criminal proceedings which has postponed

their universal adoption. Lastly, we may add, for the information of some of our readers, that by the interpretation clause of the act, the word "counsel" is to apply to attorneys in all cases where, by the practice of the Court, attorneys are allowed to practice as advocates. On the whole, we think the act a beneficial change in the law. It remains to be seen whether sect. 2 creates any change in the practice at a criminal trial, beyond making the trial so much longer, as counsel for the prosecution think fit to make their second speech.

A GREAT name passing into retirement demands a brief obituary notice. Richard Bethell distinguished himself at college by that love of acquisition which he still retains. Early in his career at the bar he was honoured by the patronage of a London agency firm, remarkable alike for the extent of their business and their mode of conducting it. When but a rising junior, and before any material amendment had been effected in procedure either at law or in equity, Mr. Bethell took the first step towards the fusion of law and equity, by importing into Chancery practice the subtle strategy of special pleading and the adroit manœuvres of *Nisi Prius* advocacy. His ability as a pleader and his skill in dealing with evidence were conspicuous. No advocate had a greater command over facts. His statement of his client's case, and even his reading from the evidence in the cause, would enchain the attention, and often extort the admiration and astonishment, of his adversaries and the Court—as if it were a romance; and his references to facts and to authorities were generally more closely followed than his arguments on legal principles, though these were frequently novel in the highest degree. In due time he became the acknowledged leader of the Chancery Bar, and now the native modesty and gentleness of his character shone out in his invariably courteous and considerate demeanour towards the junior bar.

We reserve the consideration of his merits as a judge and as a patron, for separate notices; but it is in connexion with law reform that his name will chiefly be remembered. In 1857, by his vigorous but conciliatory advocacy of Lord Cranworth's bill for a Divorce Court, he mainly contributed to the passing of that measure, which has done so much for the peace and security of the domestic hearth, and, with the aid of the penny press, has incidentally driven the literature of Holywell-street and Paris out of the market, by providing pure and instructive reading for every home. In 1860 he attempted a great work—the consolidation and amendment of the bankruptcy and insolvency laws—but the merits of his bill were not appreciated—and in the following year, abandoning consolidation, he succeeded in passing the Bankruptcy Amendment Act, which has worked so admirably, and has given so much satisfaction. Not relaxing in his endeavours, in 1862, he introduced and passed the Title to Real Estates Act, which has provided comfortable incomes and abundant leisure for several deserving officials. In introducing that measure, he informed the House of Lords he was at once the inventor

and the perfecter of the plan of a registry of title; and as a ground of confidence in the proposal of a warranty of titles, he made the following effective statement:—That while during the last quarter of a century a million of purchases of land have been made for railway purposes, subject to the obligation of paying for any dormant interests that may have been overlooked, "yet so few are the instances of that kind which have occurred, that I hardly venture to mention the number, but it should seem too inconsiderable to be credited. I believe that not more than a dozen discoveries of latent interests have been made during the last twenty-five years." This is a fair example of the care and industry with which this conscientious reformer was accustomed to collect, and the scrupulous accuracy with which he set forth, the statistics upon which his measures were based. Any ordinary person, however well versed in railway matters, if he were asked—how many bad titles have railway companies taken? might reply—Who can tell? The names of their advisers are legion; and there are no records. This does not deter Lord Westbury; he wants the fact, and he gets it. His act for giving to the county courts equitable jurisdiction to ten times the amount of their legal jurisdiction has been the last gift of that fine logical mind to an ungrateful country; for "the consolidation of the statute law, by which it has been reduced from forty-four volumes to ten," is still only a dream. Even if he should not fulfil his promise of continuing to reform the law, his worst enemies must admit that he has, at least, left it in such a state that his successors will find no difficulty in amending it.

Into the privacy of his domestic virtues we will not intrude, but we may remark, that the accounts which testify his kindly regard for the interests of his relations and friends are public property—graven with an iron pen and lead in the rock for ever.

### Imperial Parliament.

#### HOUSE OF LORDS.—Monday, July 3.

The Crown Suits, &c. Amendment Bill and the Expiring Laws Continuance Bill, were read a third time.

The Penalties Law Amendment Bill passed through committees.

#### Tuesday, July 4.

Lord *Redesdale* took his seat on the woolsack at five o'clock. The Lord Chancellor was not present.

#### MR. WINSLOW.

Lord *Chelmsford* adverted to the answer given on the previous evening in the House of Commons by the Attorney-General to a question with reference to the pension granted to Mr. Winslow, a master in lunacy. His Lordship stated that Mr. Winslow had fallen into pecuniary difficulties, and, amongst other things, had borrowed a considerable sum of money from the keeper of a lunatic asylum. In consequence of this he was unable to come to his office. On finding this to be the case, he (Lord Chelmsford) called upon Mr. Winslow to attend to his duties or to resign. Mr. Winslow desired to make it a condition of his resignation that he should receive a pension; but he (Lord Chelmsford) told him distinctly that he must not look for any pension; and eventually, Mr. Winslow resigned unconditionally. Not only, therefore, had he (Lord Chelmsford) done nothing to promote the creation of any vacancy by the resignation of Mr. Winslow,



but he had done all that he could to discourage it. He was the more anxious to clear up this matter because the vacancy which arose by the retirement of Mr. Winalow was the one which he filled up by the appointment of his son-in-law, a gentleman of great ability and of the highest character. The noble Lord then stated that he had since refused to represent to the Lord Chancellor that Mr. Winalow had retired on account of ill health, because this was not the fact. He admitted that he had written to Mr. Commissioner Holroyd, stating that he should be glad if the Lord Chancellor could see any grounds on which he could feel it his duty to grant Mr. Winalow a pension.

#### RESIGNATION OF THE LORD CHANCELLOR.

**Earl Granville.**—My Lords, you are aware, not only by rumour, but officially from the proceedings of the other House of Parliament being communicated to your Lordships, that a resolution was last night adopted by the House of Commons in regard to the Lord Chancellor. It would not only be irregular, but it would be unbecoming in me, to make any comments on that resolution; but I think it my duty to inform you that the Lord Chancellor has requested Lord Palmerston to tender his resignation to her Majesty of the post which he now holds, and Lord Palmerston has done so. It may be right that I should state, that for some months the Lord Chancellor has pressed on Lord Palmerston the resignation of his office, stating, that while he believed the accusations made against him to be ill-founded, yet he thought it might be injurious to the Government and to the profession that he should hold so high and distinguished a position while any suspicion rested upon him. Lord Palmerston, with his (Earl Granville's) complete concurrence, urged Lord Westbury, from time to time to withdraw his resignation. He thought that he should wait until the fullest investigation had taken place. After the expression of the opinion of the House of Commons which took place on the previous evening, the Lord Chancellor had repeated the tender of his resignation, and Lord Palmerston thought it right to advise the Government that the resignation should be accepted. It was, however, for the convenience of the public that the Lord Chancellor should retain the seals until after the prorogation of Parliament.

Wednesday, July 5.

The royal assent was given, by commission, to 212 bills. Among them were the Marriages (Lambourne), Partnership Amendment, Carriers Act Amendment, County Courts Equitable Jurisdiction, Record of Title (Ireland), Land Debentures (Ireland), Clerical Subscription, Poor-law Board Continuance, Navy and Marines (Property of Deceased), and Expiring Laws Continuance bills.

At five o'clock the Lord Chancellor entered, and took his seat upon the woolsack. Amid profound silence,

The Lord Chancellor rose and said—My Lords, I have deemed it my duty, out of the deep respect I owe to your Lordships, to attend here to-day that I may in person announce to you that I tendered the resignation of my office yesterday to her Majesty, and that it has been by her Majesty most graciously accepted. My Lords, the step which I took yesterday only, I should have taken several months ago, if I had followed the dictates of my own judgment, and acted on my own views alone. But I felt that I was not at liberty to do so. As a member of the Government I could not take such a step without the permission and sanction of the Government. As far as I was myself personally concerned, possessing, as I had the happiness to do, the friendship of the noble lord at the head of the Government, and of the members of the cabinet, I laid aside my own feelings, being satisfied that my honour and my sense of duty would be safe if I followed their opinion rather than my own. My Lords, I believe that the holder of the Great Seal ought never to be in the position of an accused person, and such, unfortunately, being the case, for my own part, I felt it due to the great office that I held, that I should retire from it, and meet any accusation in the character of a private person. But my noble friend at the head of the Government combated that view, and I think with great justice. He said it would not do to admit this as a principle of political conduct, for the consequence would be, that whoever brought up an accusation would at once succeed in driving the Lord Chancellor from office. But when the charges were first raised that

were investigated by a committee of your Lordships, I did deem it my duty to tender my resignation, and the answer which I then received, and to the prudence of which I gave my assent, was that answer of my noble friend which I have just described to you. When the committee was appointed in the House of Commons, I deemed it to be my duty, acting upon the same principle, once more to tender my resignation; but on this occasion, also, I deferred to the objections raised by the noble friend whom I have already mentioned. Again, when notice was given of the late motion in the House of Commons, I begged that that motion might be rendered unnecessary by my resignation being announced. But my noble friend thought it was my duty still to persevere, and, accordingly, my Lords, my resignation, earnestly as I wished it to be accepted, was postponed in the manner I have described to you until yesterday. Let it not be for one moment supposed that I say this in order to set up my own opinion in opposition to the kind feeling which I experienced, and the judicious advice which I received, coming, as they did, from one whom I was bound to respect, and to whose authority I felt called upon to defer. I have made this statement, my Lords, simply in the hope that you will believe, and that the public will believe, that I have not clung to office, much less that I have been influenced by any base or more unworthy motive. With regard to the opinion which the House of Commons has pronounced, I do not presume to say a word. I am bound to accept the decision. I may, however, express the hope that after an interval of time calmer thoughts will prevail, and a more favourable view be taken of my conduct. I am thankful for the opportunity which my tenure of office has afforded me to propose and pass measures which have received your Lordships' approbation, and which I believe—may, I will venture from experience to predict—will be productive of great benefit to the country. With these measures I hope my name will be associated. I regret deeply that a great measure which I had at heart—I refer to the formation of a digest of the whole law—I have been unable to inaugurate; for it was not until this session that the means were afforded by Parliament for that purpose. That great scheme, my Lords, I bequeath already prepared to the hands of my successor. As to the future, I can only venture to promise that it will be my anxious endeavour, in the character of a private member of your Lordships' House, to promote and assist in the accomplishment of all these reforms and improvements in the administration of justice which I feel yet remain to be carried out. I may add, in reference to the appellate jurisdiction of your Lordships' House, that I am happy to say it is left in a state which will, I think, be found to be satisfactory. There will not be at the close of the session a single judgment in arrest, save one in which the arguments, after occupying several days, were brought to a conclusion only the day before yesterday. In the Court of Chancery, I am glad to be able to inform your Lordships, I do not think there will remain at the end of this week one appeal unheard, or one judgment undelivered. I mention these things simply to shew, that it has been my earnest desire, from the moment I assumed the seals of office, to devote all the energies I possessed, and all the industry of which I was capable, to the public service. My Lords, it only remains for me to thank you, which I do most sincerely, for the kindness which I have uniformly received at your hands. It is very possible, that by some word inadvertently used—some abruptness of manner—I may have given pain, or exposed myself to your unfavourable opinion. If that be so, I beg of you to accept the sincere expression of my regret, while I indulge in the hope that the circumstance may be erased from your memories. I have no more to say, my Lords, except to thank you for the kindness with which you have listened to these observations.

#### HOUSE OF COMMONS.—Monday, July 5.

The Foreign Jurisdiction Act Amendment Bill passed the committee.

Mr. Hunt moved the following resolution:—

"That the evidence taken before the committee of this House on the Leeds Bankruptcy Court discloses that a great facility exists for obtaining public appointments by corrupt means; that such evidence, and also that taken before a committee of the House of Lords in the case of Leonard Edmunds,

and laid before this House, shews a laxity of practice and want of caution on the part of the Lord Chancellor, in sanctioning the grant of retiring pensions to public officers over whose heads grave charges are impending, and in filling up the vacancies made by the retirement of such officers, whereby great encouragement has been given to corrupt practices; and that such laxity and want of caution, even in the absence of any improper motive, are, in the opinion of this House, highly reprehensible, and calculated to throw discredit on the administration of the high offices of State."

He began by acknowledging the importance of the motion which he had undertaken to propose to the House, the effect of it being no less than a vote of censure upon one of the highest functionaries of the State. He then proceeded to establish the proposition upon which his resolution was founded. He read the evidence relating to the transactions between Mr. Welch and the Hon. R. Bethell, and the case of Mr. Wilde, connecting this evidence by dates with that taken in the Edmunds' case, pointing out, on the one hand, the contradictions in the former evidence, and, on the other, the proof of actual payments of money, and of what he termed the "hocus pocus" in which Mr. Miller was concerned. He then examined the evidence as to the Lord Chancellor's "laxity of practice" and "want of caution," observing that he ought to have known that Mr. Miller was in his son's interest, and that this knowledge should have aroused his suspicions; and the mere fact that Mr. Welch had been recommended by his son Richard Bethell, should have caused him to pause before he gave him a public appointment. He did not mean that the Lord Chancellor was aware of the corrupt transactions that were going on, but he had been guilty of great and wilful neglect. Mr. Hunt then reviewed a portion of the evidence which affected Mr. Skirrow, Mr. Richard Bethell, and Mr. Welch, with a knowledge of the corrupt transactions, and as to the extraordinary step of Mr. Miller with reference to the expected appointment of Mr. R. Bethell, laying stress upon dates and upon collateral facts, again charging the Lord Chancellor with supineness and want of vigilance for the public interest, as further manifested in the grant of pensions to Mr. Edmunds and Mr. Wilde.

The Lord Advocate, adverting to the groundless imputations which had been cast upon the Lord Chancellor, observed that it was difficult to get rid of the prejudice they created, and he entreated the House to listen, as a judicial tribunal, impartially, to what he should urge on his behalf. He examined the evidence relating to Mr. Wilde and the appointment of Mr. Welch, entering minutely into its details, replying as he proceeded to the remarks of Mr. Longfield and Mr. Hunt. He insisted that, on the face of the evidence, it was absurd to suppose that Mr. Richard Bethell could have exercised the influence alleged upon his father, and maintained that the recommendations of Mr. Welch were amply sufficient to justify his appointment. He discussed the case of Mr. Wilde and the conduct of Mr. Miller in reference to it, remarking that it was very easy now, when all the surrounding circumstances were known, to apply line and rule, and blame the Lord Chancellor for allowing a retiring pension to an officer. He alluded to the confusion in the evidence of Mr. Miller, and compared it with that of other witnesses with reference to the case of Mr. Wilde, reminding the House that the enforced resignation of his office was a punishment inflicted upon Mr. Wilde. The House should not express a stronger opinion in regard to the Lord Chancellor's conduct in this matter than that of the committee. With reference to the corrupt transactions in relation to Mr. Welch's appointment, he contended that there was not the most remote connexion between them and the motives which had led to the appointment, citing portions of the evidence to justify the conclusion that the Lord Chancellor stood thoroughly clear of any ignoble motive in the matter. He moved an amendment to the effect that the House, having considered the report of the select committee on the Leeds Bankruptcy Court, and the evidence upon which it was founded, agree with the committee in acquitting the Lord Chancellor of all charge, except haste and want of caution in granting a pension to Mr. Wilde; and is of opinion that further steps should be taken by law with reference to the grant of such pensions.

Mr. Hennessy observed that the amendment related to only one of the cases; it said not a word of the Edmunds' case, which was by far the worst, for it appeared from the evidence taken by the Lords' committee that other members of the

Government besides the Lord Chancellor were cognisant of certain matters relating to that case. He read extracts of the evidence to that effect; and as to the grant of a pension to Mr. Edmunds, the material facts known to members of the Government were, he said, concealed from the committee, and he insisted that the report of the committee, condemning the Lord Chancellor, was condemnatory of the Government. With reference to the Leeds case, he accused the Attorney-General of misleading the House.

Mr. Denman, without any inducement to be a champion of the Lord Chancellor, said that, having read the evidence through, he was of opinion that the heads of the resolution were unjust and untrue. After replying to Mr. Hennessy's remarks upon the Edmunds' case, and referring to the acquittal of the Lord Chancellor by the Lords' committee of any corrupt motive, he applied himself to the Leeds Court case. He contended that the testimonials produced by Mr. Welch were sufficient to justify his appointment; and as to Mr. Wilde's case, he thought the strongest evidence was contained in the candid statement of the Lord Chancellor himself, that he did not read the certificate, which, if a grave offence, was one committed by judges every day. Mr. Miller's evidence was contradicted by that of other witnesses and by his own. The suggestion, that there had been a plot to place Mr. Richard Bethell in the Leeds Court, was utterly groundless as far as the Lord Chancellor was concerned.

Mr. Bouverie avowed a want of confidence in the Lord Chancellor in the administration of his office. He concurred with the committee in putting aside all questions of corruption on his part; but there were corrupt practices going on in offices connected with him, though he was not cognisant of them, which the House was bound to notice and condemn. There had been gross malpractices on the part of officers in the Court of Bankruptcy, and he considered that the Lord Chancellor had been guilty of a dereliction of duty in granting retiring pensions without inquiry.

Mr. Hunt offered to allow his resolution to be negatived, in order to let in a resolution of which Mr. Bouverie had given notice, more distinctly exculpating the Lord Chancellor from any charge of corruption.

After a few remarks by Mr. Hoares and Mr. Vivian, The Attorney-General observed, that the amendment proposed by the Lord Advocate in express terms affirmed the decision of the committee, with the addition that it was expedient that this class of pensions should, like other pensions, be referred to the guardians of the public purse. He contended that there was no ground for a vote of want of confidence in the Lord Chancellor, to drive him from his office, and he complained of the observations of Mr. Bouverie, who had prejudged the case, in pronouncing sentence upon those who he said had been guilty of gross malpractices in the bankruptcy offices. He admitted that the Lord Chancellor did commit an error in the Edmunds' case, but the time for visiting that error had gone by, and it was unjust to tack on that case to the case of Mr. Wilde. He reminded the House of the abuses which had been ferreted out by the vigilance of the Lord Chancellor, of the odium he had incurred by these services rendered to the country, and of the manner in which he had exercised his high judicial patronage. These considerations should weigh with the House, which, in looking at the slight offences charged against the Lord Chancellor, would say—

"Non ego paucis

Offendar maculis, quas aut incuria fudit,  
Aut humana parum cavit natura."

Mr. E. Egerton thought the Attorney-General would have done better if he had left the case as it stood in the report of the committee.

Mr. Henley could not agree with the original resolution, but would be ready to vote for Mr. Bouverie's amendment.

After a few words from Colonel Pennant, the original resolution was negatived.

The amendment of the Lord Advocate being put as a substantive motion,

Lord Palmerston, observing that the House had negatived any charge of corruption against the Lord Chancellor, recommended and moved that the debate be adjourned till tomorrow (Tuesday).

Mr. Diersack opposed this motion, which was negatived, upon a division, by 177 to 168.

The Lord Advocate's motion having been negatived, Mr. Bouverie moved his amendment as a substantive motion, which was agreed to.

Tuesday, July 4.

Lord Palmerston rose, and said—Sir, it is quite right that I should inform the House that the Chancellor, in deference to the vote of the House of last night, and to the expressed opinion which that vote implied, has felt it his duty to tender her Majesty, through me, the resignation of his office, which accordingly I have done. I think it at the same time due to the Chancellor to state, that as early as the beginning of the session—the beginning of the year, I may say—the Chancellor, stung in his feelings by the various attacks which were made upon him from different quarters, often pressed upon me that his resignation should be conveyed to her Majesty. I, upon public, private, and personal grounds, declined to accept that resignation, or to be the channel of conveying that resignation. I urged upon the Chancellor to remain at his post, for this reason, that if he had resigned in consequence of the various attacks—some of them anonymous—he would thereby have been considered as implying an admission of the various charges made against him, and even more than the charges which were actually made; whereas I represented to him, that if he remained at his post, there would undoubtedly be a Parliamentary inquiry into the matters concerned; and knowing and believing that his motives throughout have been perfectly pure and incorrupt, I was convinced that out of that inquiry would result that which has resulted—an entire acquittal of the Chancellor of every corrupt motive. It will be necessary that he should continue to hold the seals until Friday morning, in order to go through those operations connected with the prorogation and dissolution of Parliament, and on Friday the Chancellor will resign the seals into the hands of her Majesty.

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*The Lord Advocate's* motion having been negatived, Mr. Bouverie moved his amendment as a substantive motion, which was agreed to.

Tuesday, July 4.

Lord Palmerston rose, and said—Sir, it is quite right that I should inform the House that the Chancellor, in deference to the vote of the House of last night, and to the expressed opinion which that vote implied, has felt it his duty to tender her Majesty, through me, the resignation of his office, which accordingly I have done. I think it at the same time due to the Chancellor to state, that as early as the beginning of the session—the beginning of the year, I may say—the Chancellor, stung in his feelings by the various attacks which were made upon him from different quarters, often pressed upon me that his resignation should be conveyed to her Majesty. I, upon public, private, and personal grounds, declined to accept that resignation, or to be the channel of conveying that resignation. I urged upon the Chancellor to remain at his post, for this reason, that if he had resigned in consequence of the various attacks—some of them anonymous—he would thereby have been considered as implying an admission of the various charges made against him, and even more than the charges which were actually made; whereas I represented to him, that if he remained at his post, there would undoubtedly be a Parliamentary inquiry into the matters concerned; and knowing and believing that his motives throughout have been perfectly pure and incorrupt, I was convinced that out of that inquiry would result that which has resulted—an entire acquittal of the Chancellor of every corrupt motive. It will be necessary that he should continue to hold the seals until Friday morning, in order to go through those operations connected with the prorogation and dissolution of Parliament, and on Friday the Chancellor will resign the seals into the hands of her Majesty.

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## NOTICE.

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## THE JURIST.

LONDON, JULY 15, 1865.

IN an age when the habits of society are such that no man can find time to go through with his occupations—be they business, reading, or amusement—thinking is commonly postponed to some future convenient time, which seldom arrives; and thus it happens that reputations are acquired upon very slender grounds, and pass current with very little investigation. It can only be for want of consideration on the part of those who lead public opinion, that Mr. Gladstone's fair scholarship, his smatterings of knowledge on many subjects, and his power of making a long financial statement without wearying his hearers, are accepted in proof of his competency as a financier, when almost every measure he proposes, and every reason he offers in support of his proposals, shews his ignorance or disregard of the most elementary principles of taxation, and even of the most obvious inferences of common sense. Whether the facility of collecting a particular tax ought to outweigh objections founded on the inequality or inconvenience of its incidence, is a question upon which opinions may differ considerably, without disparagement to the wisdom of any of those who differ; but when we find a legislator proposing and effecting, year after year, alterations in taxation which merely complicate the law, and embarrass and annoy those who come within its operation, without in any degree redressing inequalities, removing restrictions on freedom of action, or tending to improve the revenue, we can only conclude that he is meddling with matters which he does not understand, and which ought not to be intrusted to him. These remarks are immediately suggested by the two Inland Revenue Acts of the last session as affecting the stamp laws—the latter of them passed by Mr. Gladstone in defiance of advice and remonstrances proceeding from men of experience, well entitled to a respectful hearing. It is very true, that since the general Consolidation Act of the 55 Geo. 3. c. 184 (founded on some prior statutes of the same reign, which had been drawn with admirable care and skill), there has not been a single well-drawn Stamp Act; but the deterioration in conception and execution of the Inland Revenue Acts has been marked since the accession of Mr. Gladstone to power. Scarcely a session passes without alterations in the stamp laws, and these alterations are usually effected by two acts in the same session. The consequence is, that it is very difficult to determine the proper stamp to be affixed on an instrument, and impossible, without an enormous expenditure of time and trouble, to discharge the ordinary duty of ascertaining the sufficiency of the stamps upon the various instruments of different dates which come under investigation by the legal advisers of a purchaser or a mortgagor. When Mr. Gladstone accepted the office of Chancellor of the Exchequer, the stamp laws were in a most unsatisfactory state, both as to substance and as to form; and if he felt himself unequal to the task of substantially amending or

wholly repealing them, it was at least within his power to engage a competent draftsman to prepare a consolidation bill. Instead of doing that, he has trebled the complications by a series of petty alterations, under the childish notion of equalising the incidence of the duties. It would be incredible, if we had not the authority of Mr. Gladstone himself for the statement, that the clauses relating to stamp duties in the act 28 & 29 Vict. c. 96, were introduced solely as an act of relief and justice to the taxpayers. Let us first consider how the matter stood before the alteration, and then see what the alteration amounts to. As the law stood, a merchant or shopkeeper might buy or sell goods to the value of a million, without paying any duty on the transaction; but on any written transfer of property of any kind, a duty of 10s. per cent. was exacted. A written transfer of property for a real consideration of 25*l.* was liable to a duty of 2*s.* 6*d.*; a valid transfer of property of the value of 10*s.*, without consideration, or for a nominal consideration, was liable to a duty of 30*s.* A settlement of money or stock was liable to an ad valorem duty at the rate of 5*s.* per cent; a settlement of furniture or land, whether great or small in value, was liable to a fixed duty of 35*s.*; a will operating as a settlement of land was not liable to any duty. A conveyance in consideration of 25*l.* was liable, as we have said, to a duty of 2*s.* 6*d.*; an authority by the grantor to a third person to execute such a deed, was liable to a duty of 30*s.* An award paid an ad valorem duty up to 1*l.* 15*s.*; an opinion of counsel paid nothing; and so forth. In short, the entire system was devoid of any principle or symmetry; and if it had been in itself complete, logical, and symmetrical, it would still have been, in fact, and as part of a general system of taxation—an absolute anomaly, and a mere nuisance. For an ad valorem tax on a legal document bears no relation either to the means of the person who pays it, or to the value of the transaction to him; and the two great and conclusive objections to all stamp duties of the kind under consideration are—first, that they are arbitrary and unequal in incidence; and, secondly, that they are collected at a cost, in money and in trouble to the community, greater than the cost of the collection of any other tax.

Such being the state of the case, what is the relief which Mr. Gladstone gives us in the session of 1865?

First, and for this we have not to thank *him*—a reduction of the duty on fire insurance, which, though a stamp duty, is separated from the other enactments of the session relating to stamp duties, and associated with enactments relating to customs and income tax.

Secondly. Whereas the ad valorem duties on conveyances commenced with a duty of 2*s.* 6*d.*, and proceeded by steps of that amount to 1*l.* 10*l.*, and then by steps of 5*s.* to 3*l.*, and then upwards by steps of 10*s.*, they are henceforth to commence with a duty of 6*d.*, and proceed by sixpences to 2*s.* 6*d.*, thence by half-crowns to 1*l.* 10*s.*, and then upwards by crowns! But powers of attorney to execute such deeds still bear a stamp of 1*l.* 10*s.*

And whereas on awards the duty was at the rate 5*s.* of per cent. on the value of the subject-matter, up to

1000*l.*, commencing with a duty of 2*s.* 6*d.*, the duty henceforth shall commence at 3*d.*

And whereas on a simple transfer of a mortgage the same duty, up to the limit of 1*l.* 15*s.*, was payable as on the original mortgage; but no duty was payable in respect of the transfer if a further sum was charged by the same deed; now a transfer duty of 6*d.* per 100*l.* is payable in all cases. But if the security transferred is a bond, and not a mortgage, the duty is at the rate of 10*s.* per 100*l.* on the money paid for the transfer; or if no money is paid, the duty is 1*l.* 15*s.* in every case.

The duty on appraisements is unaltered in rate, but commences at 3*d.* (on amounts of 5*l.* and under) instead of 2*s.* 6*d.*

The duty on certain ecclesiastical licenses is reduced from 2*l.* to 10*s.*

The duty on an agreement for letting a tenement for less than a year, at a weekly or monthly rent not exceeding 3*s.* 6*d.* per week, is reduced from 6*d.* to 1*d.*

The duty on certificates taken out by conveyancers and pleaders within the first three years of their practice is reduced by one-half.

The stamp on a charterparty is reduced to 6*d.*, and may be "adhesive," and certain terms are prescribed for stamping charterparties after execution, which are not improvements on the regulations previously in force.

The duty on certain time policies of sea insurance is reduced. The limitation of time for applying for allowances on policies of reinsurance is repealed. The duties on policies other than life, fire, and marine policies, are altered. The duties on policies are extended to foreign policies enforceable in the United Kingdom.

Receipts for deposits on allotments of shares or scrip are charged with duty. The duties on declarations for marriage without license, and on certificates of marriage, are repealed. The duty on contracts under the Highway Act is fixed at 6*d.* And, as relevant to the subject of stamps, a variety of excise regulations are made. Such is the fruit of the splendid abilities, zeal, and industry of our Chancellor of the Exchequer during the session of 1865!

### Reviews.

*A Treatise on Arrangements with Creditors under the Bankruptcy Act, 1861, with Precedents; to which are added the Sections of the Bankruptcy Act, 1849 and 1861, and the Rules and Orders relating thereto; with a full Index.* By WILLIAM DOWNES GRIFFITH, of the Inner Temple, Esq., Barrister at Law. 12mo., pp. 204. [Sweet; and Stevens, Sons, & Haynes.]

THE arrangement clauses in the Bankruptcy Act, 1861, are in themselves utterly unintelligible; and of the 400 cases cited by Mr. Griffith, the greater part are decisions on what is properly called the construction of the act—the building up of a legal structure out of the chaotic mass of materials provided by the Legislature, who of late have done their best to redress the inequality of the rule propounded by Maule, J., that easy questions are for the Court, and difficult ones for the jury. But at present, as Martin, B., truly complained in *Scott v. Berry* (11 Jur., N. S., part 1,

p. 510), "the law which has been established about the deeds of composition sanctioned in the act of Parliament is not in a satisfactory condition. I cannot help feeling that, every time I deliver judgment on the subject." When about 400 more cases have been decided, a tolerably complete system of law on this subject will have been elaborated, and deeds of arrangement may be prepared, and advice may be given on them with some degree of confidence; and as soon as this is accomplished, we may expect that some enterprising law reformer will sweep the whole away, and prepare fresh materials for the exercise of the constructive faculties of the judge. In the meantime debtors and creditors must arrange, and do their best to keep the Bankruptcy Court and its officials at arm's length; and their lawyers must advise them according to their lights. Those who have to do so will find Mr. Griffith's book very useful. It is brief, but complete and trustworthy. On the important question, whether secured creditors are to be included in the computation of number or value, or both, Mr. Griffith writes as follows:—

"So much, at least, in general terms, seems to be now admitted law, but some difficulty still remains in the application even of these rules, the principal difficulty being on the question, who are *all* the creditors, and how are their consents to be computed in estimating the majority necessary to give validity to a deed within this section; are creditors holding specific securities to be reckoned as creditors, and if so, are they so to be reckoned for the amount of their debt covered by their security, or only for the unsecured balance, if any? In answer to these questions, it was held by the Lords Justices in *Re Shettle* (1 De G., J., & S. 260; 11 Weekly Rep. 158); see also *Ex parte Watts* (10 Law T., N. S., 74); *Turquand v. Moss* (12 Weekly Rep. 960); and, under the 185th section, *Re Murphy* (7 Law T., N. S., 26), that creditors, whether fully and sufficiently secured, must all be taken into account in estimating the necessary majority. In the case *Ex parte Morgan* (1 De G., J., & S. 288; 11 Weekly Rep. 316), the Lord Chancellor, premising that he did not mean to overrule the case of *Re Shettle*, yet gave it as his opinion, that creditors being, upon the execution and registration of such deed, brought by sect. 197 of the act of 1861 into the same condition as creditors under a bankruptcy, secured, creditors could rank against the debtor's estate only for the balance after realising the value of their securities; and the Court of Common Pleas seems to have agreed with the Lord Chancellor (*King v. Randall*, 14 C. B., N. S., 721; 11 Weekly Rep. 1031; 2 N. B. 325); *Turquand v. Moss* (12 Weekly Rep. 960), in considering that this dictum does not affect the judgment in *Re Shettle*. The only way in which the cases can stand together, is by requiring the assent of such a majority of unsecured creditors as will amount to three-fourths in value of the creditors unsecured, and the further consent of as many creditors, whether secured or not, as will make the whole number of assents up to the requisite majority of all the creditors, including the secured as well as the unsecured (by unsecured in the foregoing clause is meant to be included creditors only partially secured, so far as concerns the unsecured balance of their debt); but as no means are provided for estimating the value of the security, at least prior to the registration of the deed, it will not, considering these authorities, be safe to rely on any deed, for the validity of which the consent given by any secured creditor is requisite, unless after allowing the very maximum value which his security can possibly be worth, and estimating his assent for the balance only of his debt after deducting such maximum value; for though the consent of a secured creditor may be *prima facie* good for the whole amount

of his debt, as seems to be decided in *Re Shettle* and the other cases lastly above cited, yet when the deed comes to be admitted, his provable debt will be reduced to the unsecured balance, and, of course, his assent will have to be reduced accordingly. This may bring down the value of the assents to the deed below what is required by the 192nd section, and invalidate the entire proceeding. It is, however, not to be forgotten that the total amount of debt is reduced in such a case precisely by the same sum as the assent is reduced, a matter to be taken into consideration in determining the effect of the reduction on the validity of the proceeding.

"After the foregoing remarks on *Re Shettle* and *Ex parte Morgan* were penned, the same point came again before the Lord Chancellor in *Ex parte Smith* (10 Law T., N.S., 551, 803); in that case the assent of creditors who were fully secured, was necessary to make up the requisite majority in number as well as in value; there were seventy creditors, of whom thirty-four assented to the deed, but among the dissenting and non-assenting creditors were some who were fully secured, and if they were excluded from the number of creditors, then the requisite majority had been obtained in number as well as value. The Lord Chancellor held the deed to be invalid, on the ground that a creditor, though fully secured, was entitled to be reckoned as a creditor, for the purpose of making up the requisite majority in number, but that, if fully secured, his assent as to value was not to be estimated at anything; and his Lordship expressed an opinion that the cases which seemed to rule or did rule the point in question adversely to that opinion, viz. *King Randall* (14 C.B., N.S., 721; 11 Weekly Rep. 1031; 2 N. E. 325) and *Turquand v. Moss* (15 Weekly Rep. 960), were both founded on *Re Shettle* (1 De G., J., & S. 260; 11 Weekly Rep. 158), in which he said the supposed decision on the question was only a dictum of one of the judges. On this matter, however, it will appear from a close examination of the case, that his Lordship was in error, though his error is countenanced by some remarks in the conclusion of the judgment of the Lord Justice Turner, which were, probably, the foundation of the Lord Chancellor's mistake.

"The present writer was in court when the case of *Re Shettle* was argued and decided; and the argument in the case was certainly directed mainly to the question, whether or not the assent of fully secured creditors was to be reckoned in value for the full amount of the debt, without allowing for the value of the security. He has further taken the precaution to examine the deed and the schedule of creditors filed in the matter at the registrar's office; and it appears therefrom, that among all the creditors holding security there scheduled, one only was insufficiently secured, his debt being for 750*l.*, and the value of the security 600*l.*, and his assent had been obtained; so that the only question in the case in this respect must have been, and was, the identical question which arose in *Smith's case*, viz. whether a fully-secured creditor was entitled to rank as a creditor for value to the full nominal amount of his debt, without deducting the value of the security which would reduce that debt to nothing. Since, therefore, in the case of *Ex parte Smith* the deed was held bad, on the ground above mentioned, and is reduced, on the question now under discussion, to a dictum of the Lord Chancellor, while *Re Shettle's case*, and the other two above mentioned, remain actual decisions on the point, it is submitted that their authority is still the prevalent and binding authority, and that the assent of secured creditors cannot safely be neglected for the full nominal value of their debts in computing the majority in value as well as in number."

In *Whittaker v. Lowe* (11 Jur., N. S., part 1, p. 530, reported since the publication of the work before us), in the Court of Exchequer, the authority of *Shettle's case* and *Turquand v. Moss* was upheld against the dictum of the late Lord Chancellor in *Ex parte Smith*; but the case is under appeal to the Exchequer Chamber.

In *Ex parte Wensley* (1 De G. & S. 273; 9 Jur., N. S., part 1, p. 315), Lord Westbury, C., held that a deed of assignment not duly registered under the act of 1861, and therefore not to be "received in evidence," might be received in evidence for the purpose of being set up—not as a valid deed—but as an act of bankruptcy. In *Ex parte Potter, re Barron* (11 Jur., N. S., part 1, p. 49), an unstamped deed of assignment was offered in evidence to prove the commission of an act of bankruptcy by the execution of the deed, and *Ex parte Wensley* was cited as a decision by Lord Campbell. Lord Westbury refused to receive the deed in evidence, observing that the law was perfectly clear, and added, "I do not wish it to be understood that I accede to the decision which was come to in *Ex parte Wensley*. I should require further argument before I could follow that case." Mr. Griffith considers that the decision in *Wensley's case* is the sounder of the two, and observes, that "the point seems by no means a new one, and appears to be governed by the decisions in *Reculist's case* (2 Leach's C. C. 706), which is a judgment of the twelve judges, and that in *Coppock v. Bower* (4 M. & W. 361), beside several other cases to the like effect, which are referred to in the last-named case, while none of these were noticed in the argument in *Ex parte Potter*." We are surprised that the absurdity of the conclusion in *Wensley's case* did not strike Mr. Griffith. The enactment is, that a deed not registered according to the directions of the act shall not be received in evidence. The time for registering the deed in question had passed, and it was impossible that it could ever be registered or received in evidence. How then could it be looked at as an operative assignment—and if not as an operative assignment, how as an act of bankruptcy? The cases of *Re v. Reculist*, *Coppock v. Bower*, &c., were entirely different. In *Reculist's case*, an unstamped paper, purporting to be a bill of exchange, was received in evidence, not as a bill of exchange, but to prove that the prisoner had committed the crime of forging the signature which it bore. If it had been a genuine document unstamped, and the indictment had been for stealing a bill of exchange, it would have been inadmissible. (*Re v. Pooley*, 3 Bos. & P. 311). So, in *Coppock v. Bower* (4 M. & W. 361), in an action on an I. O. U. for 500*l.*, the defence being that it was given for an illegal consideration, namely, an agreement to abandon a petition against the return of a member of Parliament on the ground of bribery, an unstamped writing, containing the agreement in question, was admitted in evidence—not as an operative agreement—but as part of the res gestæ.

We and all our subscribers have reason to complain that Mr. Griffith cites *The Jurist* as seldom as possible—and very frequently refers only to *The Weekly Reporter* for cases which are reported in all the contemporary reports. This is a great inconvenience to those who do not burden themselves with all the reports that unemployed barristers choose to inflict on the profession.

#### BOOK RECEIVED.

The Law of Trade Marks; with some Account of its History and Development in the Decisions of the Courts of Law and Equity. By Edward Lloyd, of

Lincoln's-inn, Barrister at Law. Second edition, 12mo., pp. 93.—Solicitors' Journal Office.

### REPORT OF THE DIRECTORS

Of the EQUITY AND LAW LIFE ASSURANCE SOCIETY,  
18, Lincoln's-inn-fields, London, W.C.,

TO THE EXTRAORDINARY GENERAL MEETING,

Held on Friday, June 30, 1865.

THE fourth quinquennial period of the society's operations having closed on the 31st December last, the directors have caused a careful valuation to be made by the actuary of the assets and liabilities of the society as at that date; and have now in conformity with the provisions of the deed of settlement, to report the results to the proprietors and the assured.

It will be convenient, in the first instance, to give a summary of the progress of the society since the last valuation. In the five years in question, there have been issued 805 new policies insuring 1,159,619*l.*, the average amount of each policy being 1440*l.* In the previous five years, the number of policies issued was 725, insuring 792,485*l.*, and averaging 1093*l.* each. Comparing the two quinquennial periods, therefore, there has not only been a large increase in the business of the office, but that business is of a still higher and more profitable character than formerly.

It is worthy of note, that during the last five years the practice of effecting insurances against the birth of issue, in connexion with loans on contingent reversionary interests, has grown into importance. Up to the present date, such insurances have been effected with this society to the extent of 98,320*l.*, and the premiums received in respect of them have amounted to 5869*l.*

On the 31st December, 1859, there were in force 1336 policies, insuring 1,403,880*l.*; and, adding to these the policies since issued, there are 2141 policies insuring 2,563,499*l.* to be accounted for. Of these, 105 insuring 72,825*l.*, have become claims; 280 insuring 311,908*l.*, have terminated by lapse, surrender, or expiry; leaving 1756 policies in force on the 31st December last, insuring 2,178,766*l.*

In estimating the liability of the society under its various insurance contracts, it has been the wish of the directors to strengthen the position of the society by making an ample reserve, rather than to divide the largest sum which circumstances might seem to justify. A very large profit has been derived during the last five years from the claims being much lighter than could have been possibly expected, the losses having reached only 55 per cent. of the anticipated amount; but the directors consider it would be unwise to divide the whole of this profit on the present occasion. The process of valuation employed has, therefore, been of the most stringent character.

The table of mortality made use of has been that known as the "Experience Table," which would appear to be the most suitable, as having been derived from observations on assured life, furnished by seventeen insurance companies. The reserve obtained by the use of this table is considerably larger than that given by any of the other tables commonly employed. The rate of interest assumed in the calculations is 3*l.* per cent., being the rate commonly adopted for the purpose, as the highest which can, with prudence, be assumed as likely to prevail permanently during the currency of the policies. The whole of the loading, or addition to the net premium for expenses, contingencies, &c., has been thrown off in estimating the value of the future premiums. In these and other respects, the greatest care has been taken to avoid every-

thing in the nature of anticipation of profits not yet realised.

With these explanations the directors would call attention to the following balance sheet, in which the position of the society on the 31st December, 1864, is clearly set forth:—

#### BALANCE SHEET, DECEMBER 31, 1864.

<i>Liabilities.</i>			
Value of 1,481,724 <i>l.</i> insured under 1276 policies with profits .. .. .	£	s.	d.
Value of 70,054 <i>l.</i> bonuses thereon .. .. .	777,564	14	0
Value of 568,083 <i>l.</i> insured under 410 policies without profits .. .. .	40,926	12	0
Reserve for short term insurances, extra risks, special cases, &c. .. .. .	271,145	0	0
Claims announced and other liabilities .. .. .	13,219	8	0
Balance, being the excess of assets over liabilities .. .. .	919	4	0
	72,367	17	7
	<hr/>		
	£1,175,982	15	7
<i>Assets.</i>			
Amount of assurance fund as per printed account .. .. .	£	s.	d.
Value of 47,992 <i>l.</i> annual premiums on policies with profits .. .. .	383,996	5	7
Less reserve for expenses, future bonuses, and contingencies .. .. .	709,825	2	
	140,020	14	
	<hr/>		
	589,804	8	0
Value of 18,086 <i>l.</i> annual premiums on policies without profits .. .. .	226,352	18	
Less reserve for expenses, &c. .. .. .	29,744	10	
	<hr/>		
	196,608	8	0
Value of reassurances for 255,348 <i>l.</i> .. .. .	34,563	14	0
	<hr/>		
	£1,175,982	15	7

The directors recommend that of the above balance of 72,357*l.* a sum of 2400*l.* should be appropriated to reduce the price at which the society's house stands in the books; and that the remaining sum of 69,957*l.* be actually divided. The share of the proprietors will be 6995*l.* 14*s.*, which will allow of the payment of an increased dividend for the ensuing five years at the rate of 8*s.* 6*d.* per share, or 8*l.* 10*s.* per cent. on the amount originally paid. The amount to be divided among the assured will be 62,961*l.* 6*s.*, and the amount of the policies which will participate on the present occasion, being effected on the participating scale, and of more than one year's standing, is 1,339,608*l.* At the last division of profits the sum of 39,500*l.* was divided among policies for the sum of 925,306*l.* If the same relation still subsisted, the sum to be divided among the assured would be 57,186*l.* The sum now to be divided is, therefore, considerably larger in proportion; and this, notwithstanding that a larger proportionate reserve has been made.

In distributing the above sum among the assured care has been taken to adjust equitably the shares of persons insuring at different periods in the society's existence. A somewhat larger bonus will be given to the persons who insured many years ago, than to persons who have insured at the same age more recently; but this difference is proportioned to the larger profit derived in the former case; and no advantage is given to the older assured at the expense of the more recent. A larger bonus will be also given to those persons who chose the reversionary bonus at former divisions, than to those who have received the value of the former bonuses in cash, or reduction of premium.

The principle on which the distribution has been made, will be better understood when it is stated, that

the average rate of interest at which the funds of the society (including the unproductive assets) have been improved during the last five years has been 4l. 8s. per cent. per annum, after deduction of income-tax. In all the valuations, it has been assumed that 3l. per cent. only would be realised; and the profit from this source upon the amount of the funds on the 31st December, 1859, forms a considerable sum, of which persons who have insured subsequently have contributed no part.

The directors, in conclusion, bearing in mind that it is essential to the continued prosperity of any insurance company that the amount of new business should be maintained, or increased, from year to year; and believing that the advantages offered by the "Equity and Law" need only to be known to be appreciated, would urge upon the proprietors and the assured the importance of making known, as widely as possible, the facts above detailed.

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## THE JURIST.

LONDON, JULY 22, 1865.

## THE CASE OF CONSTANCE KENT AND THE SEAL OF CONFESSION.

SOME questions of considerable legal interest may be raised in the case of Constance Kent; as to the nature of which, however, much misapprehension appears to prevail. The case has been discussed, for instance, not only in the press, but in Parliament, as if it were one which raised the question of the seal of sacramental confession: If it were, the question, perhaps, would not be quite so clear as the late Lord Chancellor and the Home Secretary appeared, in their answers to inquiries, to assume. But it is, in truth, no question of the kind. And it is rather observable, but very easily explainable, that hardly any case has ever occurred in which the question, in a pure and simple form, has ever arisen. That is, the question: whether, by the law of England, the seal of sacramental confession is or is not respected. It is very easily explainable how such a question, in so pure and simple a form, should scarcely ever have arisen; for it will be obvious, upon reflection, that unless either the priest do something out of confession, or the penitent in some way disclose the matter of confession—neither of which cases is likely to occur—there is not likely to be any clue to this species of evidence. It may be from this reason, or it may be from the natural disposition on the part of the courts of law, while this country was Roman Catholic, to respect the seal of confession; but certain it is, that from the very earliest period down to the Reformation, no authority can be cited to shew that a priest was *compellable* to disclose matter strictly coming under the seal of confession. Whether or not this is precisely the same question as whether such evidence would be *receivable*, if offered, or not refused, no case can be cited in which it was even voluntarily offered and received; though this, of course, might be accounted for by the absence of reports. The two questions, however, are practically identical; for, of course, whether or not a priest was legally compellable to disclose matter of confession (or, rather, whether he was legally *punishable* if he did not disclose it), no one can doubt that he would have been regarded as infamous by a Roman Catholic community if he did so. Perhaps, indeed, he would be so regarded, even by a *Protestant* community (as the case of Mr. Wagner seems to indicate), not, indeed, necessarily on the ground of religious sacredness, but on the ground of breach of confidence; for undoubtedly, according to the common understanding of those who practice confession, it is deemed sacred; and if a priest receives it upon that understanding, many, if not most persons, would consider that he was bound in morality, and in honour to respect it, even though in law he was bound to disclose it; and that, at all events, if he meant to obey the supposed legal obligation, he ought to warn his penitent that he intends to do so, if called upon; in which case, of course, no one would confess to him. And those who summarily hold that confession is

not legally sacred, appear to overlook the difficulty that if this were once understood, and acted upon, confession would no longer be practised, so that the denial of the legal sacredness of confession would practically be equivalent to its legal abolition; or to the denial of its legality, which would lead to awkward consequences. And it does not appear an adequate answer to this to reply, that this would not matter, because, if confession were sincere, it would be open and public. For surely this is confounding human justice with divine; and the penalties of human laws are hardly of moral obligation! Many persons, indeed, doubt if it is *lawful* to hang criminals, even for murder. And assuming that it is so, it is, at all events, an open question among Christians. And there were times, even within living memory, when horse stealing was capital. Could not a man be sincerely sorry for having stolen a horse, who, nevertheless, was not ready and willing to be hanged for it? And what moral obligation could there be voluntarily to submit to a sentence which now all Christian jurists regard as inhuman, and contrary to divine law? And even admitting that capital punishment for murder is not *inconsistent* with divine law, can any one say it is *imposed* by divine law? If so, then no one convicted, if convicted legally and rightly, could lawfully, by divine law, solicit pardon; which is absurd. The utmost that can be said is, that it is lawful to hang persons for murder. But that is far from shewing, that they are bound by divine law to render themselves up to be hung for it. If not, then confession may be sincere, although secret; and if so, then, assuming confession to be lawful, to say the least, it is not obvious that it is to be disclosed. That in Roman Catholic times it was not disclosed seems clear, for legal history records no instance of it; while, on the contrary, ecclesiastical history records cases in which its disclosure has been deemed sacrilegious; and even the *attempt* to enforce it, equally so. Practically, there appears to be no difference between the question; whether a priest can be compelled to disclose matter of confession; and whether he may *volunteer* it. For, in the first place, he *cannot* be compelled to disclose it; and though he can be punished, if he does *not* do so, his *doing* so must be a voluntary act. And, in the next place, if he is bound to disclose it in a court, it can only be because of the obligation of human law; and assuming such obligation, then surely it equally applies, whether the priest is or is not *summoned*, and called upon; and if he may *disclose*, then it follows, that he may *denounce*; and so the priest would be a kind of policeman or public prosecutor; and we need not say, that if this had ever been understood, confession would have speedily ceased in the land; and the fact, that it prevailed down to the Reformation, and even afterwards, and exists, as the present case shews, down to the present time, not only in the Church of Rome, but in the Church of England, is abundantly enough to shew that it has not been so understood, and could not have been so understood. It is manifest that confession, a sacrament of the Romish Church, could not have existed, if it had been so understood. And it is very observable, that in the 9 Edw. 2, c. 10, where it

is provided, with reference to privileges of sanctuary, that those who are in sanctuary may go forth for necessary purposes, it is provided—"that they may, whenever they will, confess their offences to priests;" and it is added—"but let the confessors beware that they do not erroneously inform the appellors (i. e. the prosecutors) thereof;" which plainly implies, not only that the law recognised the seal of confession, but that the Legislature made special provision for it, and went out of its way to caution confessors not to violate the seal. Lord Coke, in commenting upon this, says not a word to suggest that it is obsolete or bad law; on the contrary, he recognises it, and only introduces an exception, in the case of inchoate or attempted treason, when the safety of the realm requires it—that is, where one of several traitors confesses a conspiracy to dethrone the Sovereign or murder her—and the public weal requires immediate disclosure. Whether this exception would have held in law it is not worth while to discuss; it probably never did occur, and certainly never will occur. Enough, that Lord Coke recognises the general law as to sacredness of confession. The Reformation did nothing to alter the law upon that subject. The Articles contain nothing against confession; the service of the Visitation of the Sick recognises it, and actually advises it; and it contains an absolution in the judicial form used by the Romish priest—"Ego te absolvo." Added to this, one of the Canons declares that a priest who discloses matter of confession is irregular, except in the case which is excepted by Lord Coke. Confession, therefore, is rather recognised than otherwise in the Established Church; and as to the Roman Catholic Church, it is tolerated by law; and the act of 1831 expressly recognises bequests for the teaching and administration of the Roman Catholic faith. It is by no means clear that even in the English Church confession is not a sacrament, for the answer in the Catechism as to the number of the sacraments—"Two only generally necessary to salvation"—would not necessarily, whether upon Roman Catholic or Anglican construction, exclude confession; for it has been held that, according to our law, marriage is sacramental (*Richards v. Dovey*, Willes's Rep. 622); and the Roman Catholic Church does not consider all the sacraments "generally necessary to salvation;" for example, it has been legally proved that extreme unction is not. (*Reg. v. Howell*, 1 Car. & K. 689). There is nothing, therefore, in the statutes of the Reformation to alter the common law on the subject one way or the other. And as to the cases since these statutes, they have, for one reason or another, been indeterminate and indecisive.

No light is thrown upon the question by the cases as to the exclusion of a confession from evidence, on the ground that it has been made to a chaplain, or to some one in authority. (*Reg. v. Giffin*, 6 Cox's O. C. 219). Such cases can only apply where the priest voluntarily offers the evidence, and it is objected to on the ground that the confession has been obtained by undue influence, which is quite another point.

It is not surprising that Mr. Best, in his learned work on Evidence (p. 596), treats it as a very ar-

guable question, whether by our law the seal of sacramental confession does not bind at law. He says distinctly that there can be no doubt that, previous to the Reformation, statements made to a priest in sacramental confession, were held privileged. And he does not state anything to shew that the case is altered. Indeed, as already mentioned, the question in a pure and simple form could scarcely ever arise. In *Garner's case* the supposed exception would apply (as it was a case of treason), and yet Lord Coke labours to shew that it was not a matter under the seal of confession at all, but out of confession; and that has always been the case wherever the claim of privilege has been overruled. The privilege of cause only applies to what is said in the course of sacramental confession. That is what is said by the penitent, for he only confesses; and it is the privilege of confession. It is, in other words, the privilege of the penitent, not of the priest. This is according to general principles of law as to privileged communications. The privilege, it has always been held, is that of the patient or the client, not of the medical attendant or the attorney. So, assuming a privilege in sacramental confession, it is that of the penitent, not of the priest. It is a privilege to protect the penitent, not the priest. To conceal what the penitent has said, not what the priest has said. Of course, in cases where the penitent has not disclosed the secret, and disclosure of what the priest has said may tend indirectly to disclose what the penitent had said, the privilege, assuming it to exist, may apply to what the priest said, but only on account of the penitent. And if the penitent has already disclosed the matter of confession, the seal is broken, and it no longer exists. The concealment of what the priest has said cannot now be of any advantage or avail to the penitent (for whose benefit alone the privilege can possibly exist), but may be to his prejudice. For instance, the disclosure by the penitent may have been the result of persuasion or influence by the priest, which would in a court of law be deemed undue, and which might exclude the confession of the penitent as legally admissible evidence, and thus the disclosure of what the priest had said, not its suppression, would be for the protection of the penitent; and the priest, in setting up the supposed privilege, to suppress what he said, is using the privilege, not for the advantage of his penitent, but adversely to him; not for the protection of the penitent, but for his destruction. And this is the question which will arise in *Constance Kent's case*, if, on any issue, direct or collateral, Mr. Wagner should refuse on the trial, as he did at the hearing, to answer, as to what he said. This would be setting up the supposed privilege not to shield, protect, or save his penitent, but to ruin and destroy her, and deprive her of any chance of safety. No one ever heard of any privilege set up to destroy the privileged party. And, as already pointed out, if the privilege exists, it exists only for the benefit and protection of the penitent. That a confession obtained by illegitimate influence or inducement is excluded in a court of law, is clear, even although the form it actually takes is a mere exhortation to tell the truth. (*Reg. v. Garner*, 2 Car. & K. 920). And

no one can doubt that a priest, in the confessional or out of it, used illegitimate influence to induce the penitent to make a public confession, then that confession would be excluded as legal evidence. That is the question which may arise in *Constance Kent's case*; whether or not, the question also arises, whether a priest can be compelled to disclose statements made to him in confession. That question could only arise if the clergyman were asked as to other or further statements made by the prisoner in the course of confession, beyond or beside those made in public confession; and the question might be one of great difficulty, as it would be one of some complication. But the question which did arise on the hearing, and which is most likely to arise on the trial is, whether, when asked by the Court or the counsel for the prisoner to disclose what he said to the prisoner, in order to discover whether any illicit inducement was held out to confess publicly, the clergyman can decline to answer. We think not; and that, whether or not the law regards the seal of confession, for that seal, in this case, is broken by the act of the penitent. And what the priest said, upon or after her sacramental confession—though it might, indeed, be covered by the seal of confession before the penitent had broken it (because its disclosure might tend indirectly to disclose it)—can scarcely exist afterwards. Confession was then over. The priest could hardly endeavour to induce her to confess publicly until she had already confessed *secretly*; and, on the other hand, what he said after her confession could not necessarily be covered by the seal of confession. If covered by it at all, it could only be incidentally and indirectly, *before* she had broken the seal; *after* she had broken it, how could it possibly cover what he said? Now, what he said might possibly have been in law illegitimate influence to induce her to make public and open confession, and might *exclude* that confession as legal evidence in a court of law. It being said in the *confessional*, or on an *occasion* of confession, would not necessarily cover it by the seal of confession. It has been held, that if a priest receive restitution of a *stolen* article after confession; he cannot decline to answer from whom he had the article. (*Reg. v. Hay*, 2 *Fost. & F.* 4). And of course it would be the same although it was in the *confessional*, for it could only be *after* confession, and so must be necessarily *out of* confession; and moreover, it would be an act of the priest as well as of the penitent. In that case it was held, indeed, that the evidence might be extracted compulsorily; à multo fortiori, where, as in the present case, the priest has brought his penitent up to public confession. In both cases the question would be, not what the *penitent* said, but what the priest said, and the objection would not be to protect the penitent, but the *priest*. That case, therefore, bears clearly and closely upon the present, supposing the question to be put as suggested. Of course, these lines being written *before* the assizes have opened, it may be that no question of the kind may arise, for the unhappy girl may plead guilty. Even in that case, however, it is not quite clear that the question might not arise on a collateral question, as to her sanity and competence to plead. Counsel might rise, not, indeed, as *her* counsel, for if she be insane, she cannot plead, but as *amicus curiæ*, to suggest, and give the Court to understand, that the prisoner is not in a sane state of mind, and so is not competent to plead; upon which a collateral issue would be raised, and evidence would be taken as to her present state of mind. This might or might not involve the question of her insanity at the time of the act itself; and if the case were one of hereditary insanity, and continuing insanity, it would be so. Again: it might be a case of insanity super-

vening since the time of the act, and induced, it may be, by spiritual influence and over excitement acting on a mind weakened by an hereditary predisposition to insanity. In either case, especially the latter, the question of the nature and extent of the influence exercised over her by the priest, with reference to her alleged confession, might be material. If, for instance, he refused to administer absolution, unless upon condition of a public confession, assuring her that, upon pain of damnation, she was *bound* to such confession, it might be a very grave question whether this, coming from a person in a position to exercise such undue influence, as would avoid a will, for instance, would not invalidate a confession. That it would be undue, no one can doubt; for, upon the ground already adverted to, there is no necessary connexion between human justice and divine, and though the priest might be right in exhorting her to public confession, he would have no right to impose it as a condition. This, however, at all events, it would not be for the priest to judge; and the point is, that he has no right to withhold information as to what passed. It might be more material still, with reference to sanity. The observations which, so to speak, led up to the supposed confession might be very material, with a view to test its reliability, and her sanity or insanity. And when a priest has publicly and ostentatiously connected himself with the open and public confession, by accompanying the penitent to the police court, and by avowing that she had been a penitent of his just previous to the public confession (which almost necessarily implies that something had passed between them on the subject); and further, by actually proving the confession; all this amounts to conduct on his part out of confession, connected with his conduct in confession, and uncovered by the seal of confession, even supposing any to exist. It may or may not be that the questions, or any of them, may arise. But they may arise; and as, about the time these lines are published, the report of the case may appear, it may be of interest to the profession to see what, *a priori*, were the ideas which occurred to a member of a profession, to remark on the case before it came on for trial. Let it be distinctly understood, at all events, that it does not involve the question of the sanctity of confession. If the priest is called upon to answer, and refuses, and he is committed for not answering, it is apprehended that the jury must be discharged, and the prisoner remanded into custody until next assizes.

#### GENERAL EXAMINATION.—MICHAELMAS TERM, 1865.

THE Council of Legal Education have approved of the following rules for the public examination of the students.

The attention of the students is requested to the following rules of the Inns of Court:—

“As an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each, and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination; and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being



called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto."

"At every call to the Bar those students who have passed a general examination, and either obtained a studentship, an exhibition, or a certificate of honour at such examination, shall take rank in seniority over all other students who shall be called on the same day."

#### RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Michaelmas Term, to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship, an exhibition, or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Monday, the 23rd day of October next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Monday, the 30th day of October next, and will be continued on the Tuesday and Wednesday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Monday morning, the 30th October, at half-past nine, on Constitutional Law and Legal History; in the afternoon, at half-past one, on Equity.

Tuesday morning, the 31st October, at half-past nine, on Common Law; in the afternoon, at half-past one, on the Law of Real Property, &c.

Wednesday morning, the 1st November, at half-past nine, on Jurisprudence and the Civil Law; in the afternoon, at half-past one, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Wednesday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the student is a candidate for honours, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a can-

didate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

The READER ON CONSTITUTIONAL LAW and LEGAL HISTORY proposes to examine in the following subjects:—

1. The principal statutes from the time of King John to that of Queen Anne.

2. The State Trials in the reigns of James I, Charles I, and Charles II.

3. The chapter on the English Constitution in Hallam's Middle Ages (c. 8, part 3).

4. Hallam's Constitutional History, from the accession of James I to the Revolution of 1688.

The READER ON EQUITY proposes to examine in the following books:—

1. Haynes's Outlines of Equity; Smith's Manual of Equity Jurisprudence; Hunter's Elementary View of the Proceedings in a Suit in Equity, part 1.

2. The Cases and Notes contained in the 1st volume of White & Tudor's Leading Cases; the Act to further amend the Law of Property and to relieve Trustees, 22 & 23 Vict. c. 35; the Act to further amend the Law of Property, 23 & 24 Vict. c. 38; the Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, 23 & 24 Vict. c. 145; the Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of Lancaster, 25 & 26 Vict. c. 42; the General Orders of the Court of Chancery of the 1st February, 1861, and of the 5th February, 1861 (7 Jur., N. S., part 2, p. 58); Mitford on Pleadings in the Court of Chancery—Introduction, c. 1, ss. 1, 2; c. 1, s. 3 (the first six pages); c. 2, s. 1; c. 2, s. 2, part 1 (the first three pages); c. 2, s. 2, part 2 (the first two pages); c. 2, s. 2, part 3; c. 3.

Candidates for certificates of having passed a satisfactory examination will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for the studentship, exhibition, or honours will be examined in the books mentioned in the two classes.

The READER ON THE LAW OF REAL PROPERTY, &c., proposes to examine in the following books and subjects:—

1. Joshua Williams on the Law of Real Property, 6th ed.

2. The Law of Copyholds—Josiah Wm. Smith on Real and Personal Property, 3rd ed., pp. 118-127, 209-211, 928-935, and the other references in the Index; under title "Copyholds."

3. Personal Annuities, Stocks, and Shares—Joshua Williams on Personal Property, 5th ed., pp. 180-213.

4. Doe v. Hiscocks (5 M. & W. 363), and the Notes to that case, Tudor's Leading Cases in Conveyancing, pp. 819-836, 2nd ed.

5. Spencer's case (5 Co. 16); and the Notes to that case in 1 Smith's Leading Cases at the Common Law, p. 48; Sugden's Vendors and Purchasers, 14th ed., pp. 576-598.

Candidates for the studentship, exhibition, or honours will be examined in all the foregoing books and subjects; candidates for a certificate in those under heads 1, 2; and 3.

The READER ON JURISPRUDENCE, CIVIL and IN-

INTERNATIONAL LAW, proposes to examine in the following books and subjects:—

1. The First Book of the Institutes of Justinian, with the Notes of Sandars or Ortolan.

2. Mackeldellii—*Systema Juris Romani hodie Usitati* (Leps. 1847)—*Pars Generalis*, §§ 116-142—*Pars Specialis*—*Jus Familiare*, lib. 3.

3. Code Napoleon, §§ 144-515.

4. Maine's Ancient Law, c. 5—Primitive Society and Ancient Law.

5. Wheaton's International Law, part 2—Absolute International Rights of States, pp. 115-356 (ed. 1863).

Candidates for the studentship or honours will be examined in the whole of the above-mentioned subjects; but candidates for a pass certificate will be examined in 1, 4, and 5.

The READER ON COMMON LAW proposes to examine in the following books and subjects:—

Candidates for a pass certificate will be examined in—

1. The ordinary Steps and Course of Procedure in an Action at Law.

2. The Law of Contracts, so far as set forth in Smith's Lectures on Contracts, 1-5 inclusive.

3. "Torts Generally." Broom's Commentaries (3rd ed.), book 3, c. 1, and "Torts to the Person." Id., c. 2, to p. 730.

4. The Law of Homicide and Simple Larceny, which may be read from Archbold's Criminal Pleading (15th ed.)

Candidates for the studentship, exhibition, or honours will be expected to be familiar with 1, 2, and 3 of the above subjects, and will also be examined in—

5. "Pleadings in an Action."—Broom's Commentaries (3rd ed.), pp. 159-192.

6. The following Cases, with the Notes thereto, in Smith's Leading Cases:—*Armory v. Delamire*; *Ashby v. White*; *Chandelor v. Lopus*; *Collins v. Blantern*; and *Pasley v. Freeman*.

7. Foster's Discourse of Homicide, cc. 1, 2, 3, 5, and 8.

8. "Maxims applicable to the Law of Evidence."—Broom's Legal Maxims, (4th ed.), c. 10.

By order of the Council,

WESTBURY, Chairman.

Council Chamber, Lincoln's-inn,

July 14, 1865.

## PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Michaelmas Educational Term, by the several Readers appointed by the Inns of Court.

### CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader on Constitutional Law and Legal History proposes to deliver, during the ensuing Educational Term, Six Public Lectures on

THE HISTORY OF ENGLISH LAW UNDER THE STUARTS.

With his Private Class, the Reader proposes to go through the principal Statutes, Trials, Cases, and State Documents, which illustrate the History of the English Constitution and the History of English Law under the Stuarts. He will use Hallam's Constitutional History and Coke's Institutes as his principal Text-books.

### EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

### An Elementary Course.

1. On Civil Judicial Procedure in General. On the Origin of the Feudal System, and its Influence over Judicial Procedure.

2. On the Origin of the Superior Courts of Law and Equity.

3. On the History of the Court of Chancery; its Ordinary and Extraordinary Jurisdiction and Present Constitution.

4. On the Custody of the Great Seal.

5. On the General Principles of Equity.

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LONDON, JULY 29, 1865.

## THE WIFE'S AUTHORITY TO PLEDGE HER HUSBAND'S CREDIT.

If a woman living with her husband orders necessities, suitable to his apparent estate and degree, and she orders them on credit, he having forbidden her to do so, is he liable? One would suppose that this was a question which lawyers would be able, satisfactorily, if not easily, to answer. And yet, as our readers are aware, the answers it has received are certainly far from satisfactory, for they are hesitating, and, indeed, contradictory; and it would seem, therefore, that the question is one which it is not so easy to answer. Yet when the grounds and reasons of the decision are examined, it may appear, that in this, as in most cases of legal doubt, the difficulty has arisen simply from leaving out of consideration elements which enter into the question. If we find that the decisions, one way—against the husband's liberty—unanimously leave out of consideration that which would be the governing principle in such cases, there can be little difficulty in arriving at the conclusion that they are erroneous; and it will certainly be easy to shew that this has been so. All agree, that the question resolves itself into one of agency; but then it has been forgotten that there are several kinds of agency or authority: actual agency, or agency in fact, whether express or implied, general or special, and agency implied in law; and again, as opposed to actual agency, or agency in fact, *apparent* agency, or authority, arising from being *held out* as having such authority. And lastly, general agency or authority, implied in a certain position, office, or function; and *special* or particular agency. The primary question surely must be the ordinary agency or authority of the wife while living with her husband, in household or domestic matters. There must be some distinction between the case of a wife *not* living with her husband, and of a wife living with him; just as there must be some distinction between her authority in household and domestic matters, and matters of business. Even when they are living separately—slight evidence—mere knowledge that she is incurring debts with a tradesman, and no attempt at interference, may be sufficient to fix the husband for necessities, on the ground of actual authority implied in *fact*. (*Edwards v. Powell*, 5 Man. & G. 624). And there may be an authority implied in *law*, on the ground of absolute necessity, as in case of his lunacy (*Read v. Legard*, 6 Exch. 636), or her death. (*Ambrose v. Kerrison*, 10 C. B. 176). And again: even in matters of business—slight evidence, as her being in the habit of attending to such matters—may suffice to shew an actual authority even to make admissions (*Meredith v. Foolner*, 11 M. & W. 202), or sign bills (*Low v. Hall*, 8 C. B. 627). Just as in any other case of agency (*Lurders v. Bradwell*, 5 C. B. 583). Where the wife is living apart from the husband, the question must usually be one of

authority in *law*, arising from necessity, for of course there is not likely to be any actual authority, or any holding out of the wife as agent, and, therefore, it is that in such a case the question of separate allowance, and its sufficiency, may arise (*Holden v. Cope*, Car. & K. 437; *Johnston v. Sumner*, 3 H. & Norm. 261); but there the Court laid it down, "that if a man and his wife *live together*, it matters not what private agreement they may make, the wife has *all the usual authority of a wife*." And again: "Authority may be express or implied, or arising from conduct; as where one person holds out another in such a way as to induce a belief of authority." This implies plainly what we premised, that a wife living with her husband has an ordinary or usual general authority in domestic matters, quite different from the actual authority she may acquire in matters of business, or the authority which may, when she is living apart, be implied in law, on the ground of necessity. In the latter class of cases, no doubt, there must be a real substantial necessity, and the question of sufficiency of allowance or separate means is, of course, to that question most material. But it would be quite otherwise, when she is living *with* her husband, in matters purely domestic. It is undoubtedly true, that the liability of the husband, while living with his wife, for goods supplied to her, depends upon the question whether she is his agent, for the purpose of binding him by her contract; and that, in determining that question, the *extravagant nature of the orders* is a matter fit for the consideration of the jury (*Lane v. Iremonger*, 13 M. & W. 368); because the extravagant nature of the orders is a matter open, and palpable, and apparent to the tradesman, and compared with her husband's apparent position and resources, it may be material on a question of apparent authority, or holding out of the wife as agent; just as on a question of authority in law implied from necessity, the sufficiency of allowance or separate income may be supposed. But the case just cited implies what is laid down in later cases, that the wife, while living with her husband, has a usual general authority in household or domestic matters, or how could she be held out to the world as agent in such matters? Holding out, it is to be observed, must either be to all the world, or the neighbourhood where a person lives, which is the world to him and them, or to the particular tradesman. Thus, a man may hold out a woman not his wife as his wife; and if so, then he may be liable while living with her as man and wife. (*Ryan v. Sams*, 12 Q. B. 460). And the liability of a man who has cohabited with a female not his wife, and has obtained goods to be supplied at her residence on his credit, continues until the parties supplying the goods have been informed of the termination of such coverture. (*Ubi sup.*) Hence, it is manifest that the authority of a woman living with a man as his wife is one arising from her being placed in a position which always of itself implies a usual and general authority in household matters; and that this authority continues during cohabitation until it is revoked, not merely to the wife herself, but to all the world, or the particular tradesman. In *Renan v. Teakle* (8 Exch. 680) it was said by Pollock, C. B., that the wife is in no other

situation in this respect than any other member of the household. If a servant goes to a shop, and orders goods on the credit of his master, the shopman is bound to ascertain the servant's authority; and so a shopkeeper is bound to inquire into the authority of the wife. This dictum was so obviously wrong, that in one report (1 Com. Law Rep. 62), Martin, B., immediately added, by way of correction—"If a wife orders things reasonably necessary for her degree, the husband is, *primâ facie*, liable; which, of course, implies that her position as wife implies authority." And surely every one's knowledge of the world may draw, that in the common opinion of all men, lawyers and laymen, a respectable married woman living with her husband has a domestic "agency and authority simply in that character, and that if she orders goods of a tradesman, no tradesman would ever dream of going to the husband to ask, even in the first instance, whether she had authority." In point of fact, the question, however, never arises until after the wife has for some period lived with her husband managing his household, and giving orders for necessities on credit. So that even if a wife were "in the same position as every other servant, she has always acquired a usual general authority." It can scarcely be said in common law that she is like every other servant, for she is, at all events, the manager of her husband's household, and must, at least, be in the position of a foreman or manager; and no one surely could say that there was no difference between her authority and that of a scullerymaid. But even if there were none, the servant, once entrusted with an apparent authority to order goods on credit, that authority must be revoked, not to the servant merely, but to the world, or to the tradesman. This it is which has been entirely overlooked in all the cases adverse to the wife's authority; yet it has been again and again established, that a servant, even a footman, once allowed to order goods on credit, the authority must be revoked *openly* to all persons to whose knowledge it ever had existed, and this even after his leaving the master's service, if he is allowed to *appear* still to be in that service, as if he is permitted to wear the same livery. (*Aste v. Montague*, 1 Fost. & F. 264). The only question in such cases is, whether the servant has ever been put in a position of apparent authority, and to what extent; for to the same extent, and to all persons acquainted with its existence, it must be openly revoked. (*Stavely v. Uzzielli*, 2 Fost. & F. 30). Even, therefore, if a wife is only in the position of a servant, once allowed to order goods on credit in the neighbourhood, then, at all events, while she continues to live there with her husband, her authority continues until it is revoked to the knowledge of the tradesmen in that neighbourhood; at all events, until notice of the revocation is given to all the tradesmen who had dealt with and trusted her. The degree of publicity to be given to such a notice of revocation of authority would, of course, be in proportion to the period of time during which the apparent authority had existed, the extent to which it had been exercised, the length of residence in the neighbourhood, and other circumstances. And

in each case it would be a question for the jury whether the notice of revocation was sufficient. But that during cohabitation, and at all events after having been allowed to manage her husband's household in the ordinary way, there is a general authority in the wife to order goods on credit, as is usual and reasonable; and that this authority is very apparent, and daily allowed by the husband to be exercised, and manifest to "all the world," in the sense of the neighbourhood, which is each man's little world; and that, therefore, it continues until it is withdrawn, to the knowledge of that world, appears too clear to be even arguable.

The case of a wife is open; daily management of her husband's house can scarcely be deemed less than that of the master of a ship who has authority to order goods necessary (*Arthur v. Barton*, 6 M. & W. 138); or the case of a butler or cook, who has once had authority to order goods on credit, and who certainly would bind his master for similar goods, though otherwise in the case of a club (*Todd v. Emley*, 8 M. & W. 505); or the case of a livery servant sent out of town to order oats on credit (*Aste v. Montague*, 1 Fost. & F. 264); and even if she is only in that position, then her authority continues until there has been an open revocation. It is not, perhaps, worth while to dispute whether she is not in a better and higher position, by virtue of her conjugal character as the head of her husband's household—even antecedent to her being allowed to, and beginning to, order goods on credit. For, practically, the question never has arisen, and is not likely never to arise, as to her authority in that way. It always arises after a cohabitation of some duration, and then a revocation of her authority; but, on the other hand, a revocation of it, not made openly and publicly, but merely by prohibition to herself. Thus, in the last leading case on the subject (*Jolly v. Rees*, 15 C. B., N. S., 628), the husband and wife had lived together for some years, and then we are told, being dissatisfied with her expenditure, he told her not to pledge his credit, and that he would supply her with sufficient money to buy necessities; which he did not do. This, however, was, in any view of the case, quite beside the question, for, as we have seen, the question of sufficiency of allowance only does, in cases of *separation*, when the husband is sought to be made liable, on the ground either of actual authority, or on the ground of an authority implied in law from necessity. The question was, whether the husband having for years allowed the wife to order goods from the tradesmen in the neighbourhood on credit, and she continuing to live with him in the same neighbourhood, the authority ought not to have been revoked to *her*, and not merely to *her*. This question the Court did not at all consider; nor were the authorities upon it called to their attention. They did not look at the question as one of continuing apparent authority, derived from the *original* holding out of the rule as agent, but only looked at it as a question of natural assent at the time of the orders in dispute, to her orders. They did not consider that, upon the authority of the numerous cases here adverted to (none of which are cited), the continuance of *holding out* does not depend



upon a continuance of *assent*; it depends upon the manner of *dissent*; and as the holding out, as the very term implies, has been open, and to the world, so must the dissent. When, therefore, the majority of the Court gave effect to a *secret dissent*—a revocation of authority—as putting an end to an implied and apparent authority, arising out of a public holding out, they pronounced a decision which could scarcely have been satisfactory, even if Mr. Justice Byles had not dissented. That learned judge dissented, on the grounds here presented:—"The wife's power to bind her husband may not rest merely on *actual* authority, but on the *apparent* authority with which the husband invests her by cohabitation. He thereby represents her to the tradesmen as being, within certain limits, his domestic manager, and is, therefore, responsible for her contracts, within the margin of that apparent authority. No *private* reservation of authority, or *private* agreement between husband and wife, not communicated to a tradesman honestly dealing with the wife, by supplying necessities for the family in the ordinary course of domestic affairs, can affect the tradesman's right to rely on the apparent authority of the wife." And the learned judge cited the proposition laid down by the Court of Exchequer, in the case of *Johnson v. Seime*—"If a man and his wife live together, it matters not what private agreement they may make; the wife has *all the usual authority of a wife*." Thus, then, Mr. Justice Byles and the Court of Exchequer have taken the view we have here supported; and the Court of Queen's Bench are not unlikely to take the same view. For from the report in the *Times* of the recent case of *Morgan v. Chelwynd*, at the Guildhall Sittings, the Lord Chief Justice read those observations of Mr. Justice Byles, and with great emphasis, and after some consideration, declared his adherence to them, and his entire dissent from the decision of the Court of Common Pleas; or rather, of three judges of that Court. And the Lord Chief Justice said that he did not see how the business of life could be carried on, as between mothers of families on one side, and tradesmen on the other, if the wife's authority to order goods on credit were to be put a stop to by some secret and private arrangement between her and her husband, unknown to the tradesmen who have dealt with and trusted her, with his knowledge and assent. And he added, that the view taken by Mr. Justice Byles seemed to him, on the other hand, to be equally consistent with law and with common sense. In this view we venture to concur; and it is satisfactory to observe, that the contrary view was only taken in a case in which the real point was not touched, and the authorities upon it were not considered.

### Reviews.

*The Practice of the High Court of Chancery, with some Observations on the Pleadings in that Court. By the late EDMUND ROBERT DANIELL, Barrister-at-Law. Fourth Edition, with considerable Alterations and Additions, incorporating the Statutes, Orders, and Cases to the present Time, and Braithwaite's Record and Writ Practice; together with References to a Companion Volume of Forms and Precedents. By LEONARD FIELD*

and EDWARD CLENNELL DUNN, Barristers-at-Law, with the Assistance of JOHN BIDDLE, of the Master of the Rolls' Chambers. In 2 vols. Vol. 1, 8vo., pp. 948. [Stevens, Sons, & Haynes.]

THE editors of the fourth edition of Daniell's *Chancery Practice* are imitating their author, by publishing the work piecemeal. The first volume of the original work appeared in 1837, the second in 1840, and the third was published in parts, of which the last did not appear until some months after the promulgation of the Orders of May, 1845. There is no reason to fear that the editors will emulate the tardiness of the late Mr. Daniell's progress, which was in some measure justified by the unsettled state of Chancery practice. In publishing the first volume immediately upon its completion, we think they have done wisely, both because the volume is useful as far as it extends, and because its possessors can note up in it the subsequent orders and decisions as they appear—a much easier task, and one more likely to be performed, than the noting up of five or six months' arrears, which would be necessary if the publication of the first volume were delayed until the completion of the work.

Mr. Daniell's work was a very able production, the fruit of great learning, experience, and industry, and we are glad to perceive that, in the fourth edition, it has received far better treatment than that which it met with at the hands of Mr. Headlam in the second and third editions. The editors have wisely availed themselves of the official experience of Mr. Braithwaite, of the Record and Writ Clerks' office, and Mr. Biddle, of the Master of the Rolls' chambers, to complete those details of practice which do not fall under the notice of counsel, and seldom or never form the subject of reported decisions. The work is to be completed in two volumes.

A companion volume, containing precedents of pleadings and forms of all the proceedings in use in the court with reference to the practice, is stated to be in active preparation.

From the following statement of the contents of the first volume, it will be seen that the arrangement of the original work has been preserved, but, on examination of the very numerous references in the notes to cases decided within the last fifteen or twenty years, will shew that a very large proportion of the matter of the new edition is due to the present editors:—

Cap. 1. The commencement of a suit. 2. Persons by whom a suit may be instituted. 3. Suits by persons who are under disability. 4. Persons against whom a suit may be instituted. 5. Parties to a suit. 6. The bill. 7. Process by service of a copy of the bill on formal defendants, and proceedings by service of notice of the decree. 8. Process to compel, and proceedings in default of appearance. 9. Interrogatories for the execution of the defendants in answer to the bill. 10. Process to compel, and proceedings in default of answer. 11. Taking bills pro confesso. 12. The defence to a suit. 13. Appearance. 14. Demurrers. 15. Pleas. 16. Disclaimers. 17. Answers. 18. The joinder of several defences. 19. Dismissing bill otherwise than at the hearing, and staying proceedings. 20. Motion for a decree. 21. Replication. 22. Evidence.

The editors have performed their task with great care and discretion; and we trust that we shall soon have to congratulate them and the profession on the completion of their labours, and the restoration of Daniell's excellent treatise to the position which, from the incapacity or carelessness of its former editor, and the lapse of time, it had ceased to occupy.

*The Privilege of Religious Confessions in English Courts of Justice considered in a Letter to a Friend.* By EDWARD BADELEY, Esq., M.A., Barrister-at-Law. 8vo., p. 79. [Butterworths.]

\* FROM the rule of the canon law, as set forth in the "Decretum," under the title "De Pœnitentiâ,"—

"Deponatur sacerdos qui peccata pœnitentis publicare præsumit.

"Sacerdos ante omnia caveat, ne de his qui ei confitentur peccata alicui recitet, non propinquis, non extraneis, neque, quod absit, pro aliquo scandalo. Nam si hoc fecerit, deponatur, et omnibus diebus vite sue ignominiosus peregrinando pergat,"

and adopted in England, Mr. Badeley infers that the privilege of penitential confession from disclosure was part of the common law, and that, contrary to the opinion of Lord Coke, it extended to high treason. He then inquires whether any change was made in the reign of King Henry VIII, and concludes, that as the stat. 25 Hen. 8, c. 19, which authorised the king to appoint thirty-two persons to revise the canons, constitutions, and ordinances of the Church, and saved all canons, &c. already in force, and not contrariant or repugnant to the laws and customs of the realm, nor to the damage or hurt of the prerogative, until they should be otherwise ordered by the said thirty-two persons, which was never done, these canons remained in force. Then, after shewing that auricular and secret confession was sanctioned by King Edward's Books of Common Prayer, he proceeds to argue, at greater length than we can here afford space to set forth, that such confession is still recognised as lawful by the English Church, and must involve the privilege of exemption from disclosure.

But the more important question is, as to the right of Catholics at the present day to have their confessions protected from disclosure. Having shewn that they had that right down to the period of the Reformation, our author insists that they lost it, not because it was separately abrogated by any special enactment, but because the religion, of which it formed part, was proscribed, and concludes, that as the religion is now restored, not, indeed, as the religion of the State, but as one sanctioned and protected by law, the Catholic is reinstated in his right to the perfect enjoyment of all the ordinances of his creed, and of those privileges which are necessary to the performance of his religious duties. Otherwise the Sacrament of Penance would be practically denied to the Catholic who most requires it, and the priest would be exposed to the alternative of either violating his most solemn obligations, and destroying his position and his character, or exposing himself to punishment for refusing to violate his conscience.

"How can he be said to be restored to the free exercise of his religion, or the due performance of those very duties which the law has actually authorised him to perform? Until I am shewn some act of Parliament, which has expressly destroyed the secrecy of religious confession, I must take the liberty of doubting whether any Catholic can be deprived of it, as he actually had it by law till his religion itself was exterminated, and since the free enjoyment of his religion has been restored to him, without any legislative restriction.

"With respect to Protestant Dissenters, the question may possibly not be quite so easy of solution, as that respecting the members of the Established Church, or the Roman Catholics. But if there are any of them, as I believe there are some, who recognise the duty,

\* It will easily be seen that this notice is not from the same pen which wrote the article on Constance Kent's case (ante, p. 287).

and conform to the practice, of private religious confession, they may fairly ask, why they should not have it, with all the privileges which always belonged to it, and which are essential to its due observance? If their forms of religion are legalised, they are entitled to protection in the exercise of them all. The right of confession they probably retain, as a remnant of the religious system from which they separated at or after the Reformation, and thus it may be deemed to have passed to them and unaffected, and therefore privileged; while the Anglican Church itself shews, that the Reformation has not abrogated it, and that it is not inconsistent with the religion of Protestants."

There is surely here a confusion between toleration and protection or guarantee. The act "for the Relief of his Majesty's Roman Catholic Subjects" merely removed certain restraints and disabilities, allowing Roman Catholics to sit in Parliament, or hold certain offices, on taking a certain oath, but it imposed a penalty on Roman Catholic ecclesiastics exercising the rites of their religion, or wearing the habits of their order, save within their usual places of worship or in private houses, and made provisions against the establishment of religious orders. The stat. 2 & 3 Will. 4, c. 115, provided that Roman Catholics should be subject to the same laws in respect of their schools, places of worship, education, and charitable purposes as Protestant Dissenters; and the stats. 7 & 8 Vict. c. 102, and the 9 & 10 Vict. c. 59, relieved them from various penal enactments and disabilities, and protected religious assemblies from disturbance. There is nothing in all this to authorise a Catholic, or any other Dissenter, on the strength of any religious belief or practice, to refuse to be bound by the laws of his country. A Quaker was not punishable for his religious belief, but he was punishable for refusing to be sworn as a witness, until the stat. 7 & 8 Will. 3, c. 34, excused him in civil cases; and it was not until the 9 Geo. 4, c. 32, that he was excused from giving testimony on oath in criminal cases. To say that a Catholic shall not be liable to any special pains or disabilities on the ground of his belief and ritual, is not to say that his belief or ritual shall override and exempt him from that duty of testifying to matters within his knowledge, which the law imposes on every one.

Mr. Badeley then criticises the statements of English writers on the law of evidence, and the cases on which they rely. He shews very clearly the inconclusiveness of most of the authorities commonly cited against the privilege, and commends Mr. Best for the candour and caution with which he treats the question. But he does not himself shew so much candour and caution in dealing with the case of *Butler v. Brown*, before the Master of the Rolls in Ireland in 1803, reported in Macnally's Rules of Evidence, 253, "in which, the question being one respecting the validity of Lord Dunboyne's will, the Catholic priest, who had attended him in his last illness, was called to say, whether he had died a Catholic. The priest refused to give evidence of what he declared to be 'a confidential communication, made to him in the exercise of his clerical functions.' It was admitted that there had been no previous decision upon the subject, and the refusal of the priest was defended on the analogy of other cases of privilege, and on the inconsistency which would exist in the law, if it sanctioned, or even tolerated, the Roman Catholic religion, and at the same time compelled its ministers to violate the tenets of that religion, by betraying the confidence reposed in them. The Master of the Rolls, however, decided against the privilege of the priest, 'thinking the analogy of the cases not so strong, and the principle on which the privilege was claimed not so clear, as to justify him in deciding otherwise.'

"This is the whole substance of this case, so far as it can be collected from the very imperfect report of it which alone exists; and I can scarcely suppose, that even in Ireland it is deemed of much value. It was admitted to be a case 'of the first impression,' and seems to have been very imperfectly and inadequately argued; it was decided only by a single judge, of no great judicial eminence; and the judgment, as reported, is about as meagre and unsatisfactory as any judgment can well be:—It rests upon no principle; it cites no authority; it contains no careful balancing of arguments; it ignores altogether the rights which a priest might possess by the common law; it shews no attempt to elicit truth, either by legal reasoning, or by historical research: 'sit pro ratione voluntas' seems to be its utmost effect. Taking it, therefore, in the full sense, in which it seems to have been understood by the writers on evidence, I think it of no importance, as it certainly is not binding in any court of law or equity in England, and it has no such intrinsic merit, as to give it any independent authority.

"But it is most material to observe, that the case does not really meet the point for which it has been so often cited; for the reason alleged by the priest, for his refusal to give the required evidence, is in no respect conclusive or sufficient. He is merely reported to have said, that what he was asked, 'was a confidential communication made to him in the exercise of his clerical functions.' It does not appear, that it was a matter revealed to him in confession;—in fact it is most probable that it was not;—or that, although possibly it had been alluded to in confession, it was one which he was strictly bound by the rules of the Church to conceal, for he might have known it quite independently of any confession, or simply as a confidential friend; in either of which cases the rule does not apply.

"The case, therefore, cannot be cited as any authority to prove, that religious confessions are not privileged, for it falls completely short of this. With these observations I feel that I may safely discard it."

If every decision is to be discarded as of no importance which was decided by a single judge of no great judicial eminence, or which has not been reported in great detail, or contains no careful balancing of arguments, &c., the digesting of our case law, and its reduction to a compendious bulk, will be a comparatively easy task. But we are surprised that Mr. Badeley should treat a statement alleged to have been made by a dying man confidentially to a Catholic priest in the exercise of his clerical functions, as a simple communication to a confidential friend.

"Under these circumstances," says Mr. Badeley, "I know not how any person can venture to affirm that confessions are not privileged in courts of justice. Even if statutes and canons had left this privilege doubtful, which I fearlessly maintain that they have not, it exists, as we have seen, by the common law; and therefore the legal maxim would apply to it, 'Quæ communi legi derogant, stricte interpretari debent.' (Jenk. Cent. 29; 20 Vin. Ab. 14). In a word, if confession is authorised or permitted as a religious rite, its secrecy is authorised and permitted also; for without it the rite itself is neutralised, and the rules which sanction it are a dead letter; but, as was well said by Baron Alderson, in another case (*Scott's case*, 1 Deas. & Bell's C. C. 67), 'if you make a thing lawful to be done, it is lawful in all its consequences.'"

In this conclusion we cannot concur; but we must say that Mr. Badeley has treated the subject with learning and ability; and, if he has not arrived at a sound conclusion, has at least aided the fair discussion of the question.

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LONDON, AUGUST 5, 1865.

## THE CASE OF CONSTANCE KENT AND THE PLEA OF GUILTY.

THE case of Constance Kent has brought to light, strongly and clearly, some defects in our criminal procedure. The judge was not satisfied; the press is not satisfied; the public mind is not satisfied; and it was scarcely possible that it should be. The judge said, with emphasis, and with an evident desire for a trial, "A person unacquainted with judicial inquiries might ask, why there should be any further discussion, or evidence offered, when there was a confession by the prisoner. He answered, that admissions of this kind ought to be very closely investigated, with a view to see that it has not been given from other motives than a consciousness of guilt and a desire to state it; whether it was a conscientious statement; and whether the circumstances of the case did or did not confirm it." This plainly implied that Mr. Justice Willes, a man of large and philosophic mind, as well as a learned lawyer, knows that confessions, even of capital crimes, may be made from other motives than a consciousness of guilt, and a desire to disclose it, and may or may not be confirmed; and may even, perchance, be contradicted by the circumstances of the case. And that this is so no one can doubt, who is at all acquainted with the history of criminal jurisprudence. In the very same week there appeared in the papers an account of a circumstantial confession of a murder by poison, which the magistrates found to be false. In the case of William Roupell, he was convicted, upon his own confession, of a forgery, which afterwards another jury, in a civil case, having the advantage of seeing and hearing him, refused to affirm he had committed. Nay, in this very case, it is curious it should have been forgotten, that another person confessed the crime, and, as it was thought, falsely. He, however, retracted his confession before committal for trial; but, on the other hand, Constance Kent, by adhering to her confession, avoided a trial, and its truth has not been tested. It could only be tested, either by a public trial, or by entering into details which might afford internal evidence of truth; or by its being confirmed or contradicted by circumstances and facts already established. The public trial has been avoided by a persistence in the plea of *guilty*. The confession, or rather, as Mr. Justice Willes accurately calls it, the *admission*, carefully avoids entering into any details, by which its truth could be tested, and which, on the hypothesis of truth, would, for that very reason, have been presented. All that remains is to see how far it is consistent with or inconsistent with other facts and circumstances disclosed. And we are naturally led to enter into that inquiry, because, on the one hand, the admission was made under circumstances the most strongly suggestive of some other motive than the consciousness of guilt, and the desire to disclose it; and, on the other hand, for the very reason that all the circumstances by which its truth might be tested

are carefully withheld. It is avowed—it has been publicly avowed on the part of the girl—it is plainly implied on the face of her admission—that her great object is to rehabilitate others dearly beloved by her, who have been ruined by the unhappy event. And, on the other hand, she herself has for five years endured the most terrible of all moral tortures—banishment from all one loves, and the brand of suspicion, if not the belief in one's guilt. That this belief was entertained by some, and apparently by those with whom she lived, is manifest; but it could only be by persons who were *predisposed* to believe in her guilt, for certainly all the facts were inconsistent with it. It could only have been through an utter forgetfulness of the facts proved that people could so easily have acquiesced in the truth of her so-called confession. Even in the ablest of the press there is displayed the grossest ignorance of it. Both the *Times* and the *Saturday Review* made it the basis of their argument, that it was proved almost to demonstration, that the murder was committed by an inmate of the house. There was not a particle of evidence to shew this, and there was strong and almost conclusive evidence to the contrary. It was proved that there was easy access to the nursery by the window (through a wall and the low roof of an outbuilding); and, on the other hand, it appeared that the pieces of flannel found with the body had never been washed by the laundress for any of the inmates; and the pieces of paper found in the same place smeared with blood were portions of newspapers not taken in by the master of the house, and, therefore, probably not brought there by any inmate, for it is not likely that either children or servants would take in newspapers. Nay, as large a piece of paper as would cover a space a yard in circumference was found in the well under the body, and no part of this was identified with any found in the house, or any paper ever taken in there. The surgeon swore repeatedly, what indeed is self-evident, that the deep stab in the body must have been made by a dagger—a long *pointed* knife, as he described it—and no such instrument was found in the house or in the well, nor was any weapon which could have caused such a wound missed in the house. All the circumstances, then, rather tended to shew that the crime was *actually committed* by a person not an inmate in the house, although, no doubt, most probably that person had an accomplice in the house; so that the facts not only do not shew that the murder was by one of the inmates, but, so far as they go, rather shew that it was *not*. Then, as to the particular inmate who has admitted the deed, not one of the facts confirm her admission, and many of them rather contradict it. We call it, as the learned judge so accurately called it, an admission, not a confession; for it is a mere admission—it is not a confession. A confession is always more or less explicit, and states the manner of the commission of the act, and the means by which it was concealed, both as tests of truth and in order to exculpate others. There are no details in this case; there is a mere cut and dried admission, in dry formal language. If it is not true, of course, there could be no details given; and then the absence of



details, which would be so usual and natural, is, as far as it goes, a negative evidence of untruth, or, at all events, the absence of the ordinary marks of truth. If there was an accomplice, however, and if there were two persons implicated, and one of them not an inmate, no one would suppose that *Constance* was concerned in it, for all the theories of her guilt imply that she was the *sole* criminal; and so she says herself. As to her statements, however, it has been strangely forgotten that she is not a credible witness, unless confirmed, or unless her statement, being contrary to her interest, renders it *necessarily* true. For she has been again and again examined *upon oath*, and made statements not consistent with her present admission, which was *not* upon oath, and which, as it injures no one but herself, she may suppose a very venial offence. She has shewn herself capable of committing perjury, assuming her present statement to be true; why, then, should it be credited, unless indeed a confession of a crime must necessarily be true? which it certainly is not, as Mr. Justice Willes plainly implies. It is strangely forgotten again, that another person had already made a confession of the crime—a man who seems to have been just the sort of fellow to do such a deed, a vague man who had deserted his wife, and was roaming about the country. He gave the best possible proof of the truth of his statement, for he did what *Constance* has carefully avoided doing; he entered somewhat into details; he said the child was handed to him *out of the window*; and it might have been, for he gave a *description of the house substantially accurate*, and which shewed that he must have been in it, or about it. It is true, that this man's confession was discarded, but not until examination and inquiry; and even then it was discarded without sufficient reason; the man retracted his confession, and tried to prove that he was elsewhere at the time, but failed to do so; and a pretended brother he wrote to, and from whom he produced a letter promising that he would appear and swear he was at Portsmouth on the fatal night, never did appear, nor was his letter verified; and in short, the magistrates, with that fatuity which marked their conduct throughout, set the man at liberty, though on the first version he gave an accurate description of the house. There was nothing in the case to shew that his confession was not true; and it is not the less likely to have been so, because, when he began to see the probable results of it, he got frightened, and retracted it. He had given the strongest proof of its verity, and he gave none of its falsity. Of course he must have had an accomplice in the house, and this answers all the objections to the probability of his story. These were, that the clothes were smoothed, that the drawing-room window was left open, and that a night-dress of *Constance* was missing. The accomplice, no doubt, a woman, would smooth the clothes, and would open the window, and abstract the night-dress, all to divert suspicion from herself. Why, then, was his confession so easily discarded, and why was that of *Constance* so eagerly credited? If he had an accomplice, beyond all doubt it was not *Constance*. She would have had no relations with a fellow like that; but he was just such a fellow as might have known a domestic servant,

or a former domestic servant, in the house, and had relations of some sort with her, which might in some way or other have led to the crime. And, at all events, his statement, even if false, suggested a very probable mode in which the murder *might* have been committed by some one *not* an inmate. The confession was discarded, rightly or wrongly, however, but *not without examination*; and we are contending that no confession ought to be received *without* an examination and inquiry to see how far it is confirmed or contradicted by the *known* facts in the case. There is not one single fact in the case to confirm her confession, while almost every fact in it contradicts it. To begin with the only suggested motive—revenge for ill-treatment, or jealousy of the child. Both these she solemnly disclaimed; the first by the lips of her counsel, who, in her name, solemnly declared that she had been “treated always with love and tenderness;” the second, still more emphatically by herself, at the moment before she received the dread sentence of the law. And here the question as to the truth of her confession becomes embarrassed by a curious dilemma. If her present statement is true as to her tender treatment, then her former statements upon that point were false, for her school-fellows swore she had complained of ill-treatment. But assuming her present statement to be true, what possible motive could there have been for such a deed? No one will, or ever could, suppose that a mere sudden gust of anger would lead a girl of fifteen to such a horrid deed. To render it at all conceivable, there must, at all events, have been long latent and lurking feelings of revenge or jealousy, at last rising in intensity to a kind of possession. Such was the theory suggested by the learned judge, and is the only conceivable theory. But she disclaimed both conditions—both jealousy and revenge. What, then, could it be? She did not say. Yet if she did the deed, there must have been a motive; and the confession of the motive is an important part of confession; for it very much characterises the crime. So far, then, at the very outset of the case, there is not only no confirmation of her confession, but rather a contradiction. So as to the manner of perpetrating the deed—“alone and unaided.” So she was obliged to say, to make her confession answer its avowed end—the exculpation of others; but she said no more. That much, however, is almost enough to contradict her confession. The child, it was sworn by its mother, was so stout and heavy that she could not carry him! *Constance* was a girl of fifteen, and would have had to lift him out very carefully not to disturb him, and while holding him with *one* hand, put the bed clothes as they were found (or *said* to have been found next morning), carefully straight, and tucked up and tight, that the witnesses who saw the bed could not believe the child had been taken out of it. Then she would have to carry him out of the room, and along the passage, past the door where her mother-in-law lay, restless and watchful—the floor creaking at every step, as it always does under the steps of a person heavy laden; then down stairs, every step probably creaking for the same reason; then out of the house, some way or other, open-

ing doors and windows, and shutting them or half shutting them again; and then coming back into the house and up the stairs to her room, her bed-dress or whatever she wore, dripping blood, as it must have done, at every step. Then the nature of the wounds, one of which, the stab, must, as the surgeon stated again and again, have been made with a dagger, or something of that sort. The girl does not state in her confession what she did it with, but it was sworn that she said she did it with one of her father's razors. This must have been false; no razor could have made such a stab, nor, indeed, *any* stab at all. No wonder she abstained from details in her public confession. Here we see how details may detect a falsehood. She had probably forgotten the surgeon's evidence, to which we have referred, or she *remembered* it when she *wrote* her confession, and was entirely silent as to the means and manner of perpetration. So far, then, *nothing* confirms her confession, and everything rather tends to contradict it, even if it does not altogether contradict it. But then it is suggested, that there is one fact, at all events, which not only confirms her confession, but even alone would almost suffice to convict her. That fact is, that one of her night-dresses was said to be missing. This is, no doubt, the key of the case, but it opens it, at all events, in our view of it, in a very different aspect. It is strangely forgotten that the mere fact of one of her night-dresses was missing, of itself would come to nothing, unless it was shewn that *she* had secreted it, or that no one else had the opportunity of doing so. But the very *contrary* of this is the fact, and when closely and carefully looked at, the evidence upon this point is suggestive of the most serious doubts, not as to the girl herself, but as to others; while on the other hand, the damning force of the fact, taken by itself, without any apparent possibility of explanation, may have driven her to despair, and have then been the main motive of her admission of a crime which she feared would always be believed, and could never be disproved. It is in this view that it may be the clue of the case. And, at all events, it must not be taken that the mere fact that the night-dress was missing, of itself in the least makes against her. If, indeed, it had been found missing the morning after the murder, it would have been otherwise; though even then it is worthy of notice, that an intelligent observer on the spot, in a letter to the *Times*, suggested that the night-dress might have been *abstracted*, even on the night of the murder, from her bed, her drawers, or from among the clean clothes just returned from the wash, and put even in a lumber-room. The really guilty party might easily, either on *that* night, or on the next day, have abstracted one of the girl's night-dresses, and throw suspicion on her, as it *did*, in fact, do; and upon that fact she was arrested and suspected. But, on the other hand, after it had been *investigated*, she was *discharged*. How could it have been otherwise? and how could the mere fact, that the dress was missing, be an *atom* of evidence against her? *When* was it missed? Not the next day, when the wife of one of the police came for the purpose of searching the

female inmates, and *particularly* inquired as to the girl's night-dress; nor the third day, nor the fourth day, nor even on the fifth. Not until the *evening* of the fifth day after the murder, was anything said as to the missing night-dress; and during all that time *others* in the house, including, possibly, the real murderer, had access to the bed-room and drawers, and could easily have secreted one of her night-dresses, and then suggested its absence as a ground of suspicion against her. *The latter part of the supposition actually is verified by the evidence.* One of the inmates *did*—herself under suspicion—suggest the absence of the girl's night-dress as a ground of suspicion against her; and accompanied the suggestion by a statement rather eagerly made, but which she immediately denied, that she had herself *seen* it put into the clothes-basket. Two witnesses swore that this person so said, and she denied saying so. This of itself is sufficient to suggest that the real criminal, or some one rightly or wrongly suspected, and anxious to ward off suspicion to another, might have secreted the night-dress with that view. At all events, how does the mere fact, that it was missing *some days after the event*, shew that Constance had secreted it? Other circumstances tend strongly to shew that she had *not*. If she had, then she, doubtless, had destroyed it, as it was never found. And if she could thus destroy *one* dangerous piece of evidence, so she could and would have destroyed any other. Now, there was another article of female attire, a shift, found, blood-stained, secreted downstairs in the scullery, in a place to which *servants* had access, and in which it was likely to be found. On the theory that Constance destroyed the night-dress as a proof of her guilt, she would surely not have had the fatuity *not* to destroy the other piece of clothing, but simply place it in so dangerous a place. This is upon the suggestion that it was ordinary *blood* which was found upon it, and that it *was* no evidence of guilt. The man who found it so described its appearance as to shew that it was *not* so; for he said the blood was *not* on the breast, where it would naturally have been if worn during a deed of blood, but lower down, where it would naturally be, on the suggestion that it was *not* ordinary blood. Now, as he swore it was shewn to a surgeon, and nothing more was said of it, the natural presumption is in favour of this suggestion. At all events, as the contrary was not proved, it may have been so. And as it *was not shewn to have belonged to Constance at all*, and it did not appear to have ever been in her possession, it is strange that its *disappearance* should have been made an argument against her; while, on the other hand, assuming it to have been part of the attire worn by the murderess on the dreadful occasion, then its having been found where it was, is rather an argument, coupled with the *disappearance* of the night-dress, *against* her having been the murderess. Because it seems incredible, that having successfully destroyed *one* damning piece of evidence, and having the *power* to destroy the other, she should have elected *not* to destroy it as she did the other, but to place it where it was certain to be found. There is not a particle of evidence to shew that *she* secreted *either* garment; and

as to *one* of them, there was not a particle of evidence that she ever had it in her possession. In this part of the case, therefore, there is no *confirmation*, although, no doubt, there is no *contradiction*, of her confession. Both garments *may* have been hers; both *may* have been secreted by her; but the *probability* is, that they were *not*. For if one was, then no one doubts the other was; and if she destroyed the one, she would surely have destroyed the other. On the other hand, both garments may have been secreted by some other person, the actual murderer, or a female accomplice, one of the other inmates; and this supposition is supported by the fact that another inmate (herself suspected) *did* make a statement about it, which she immediately, on the testimony of the witnesses, retracted or denied. There was, indeed, one piece of evidence produced, at a late stage in the history of the case, with a view to shew that Constance might have abstracted a night-dress from the basket; not, indeed, that *this* was the one supposed to have been worn during the murder, but in substitution for it, and in order by its abstraction, and throwing the loss on the washerwoman, to account for the loss of the other. But as to this there was a complete confusion of ideas. There was not any evidence that the girl *did* abstract the night-dress, for all that was shewn, that she had an *opportunity* of doing so, was true of every one else in the house, especially the servants, one of whom, be it observed, did try to throw suspicion upon her. And it is very remarkable that this piece of evidence, as to her having, as if accidentally, got access to the basket, was not disclosed by the servant who proved it until the latest stage in the history of the case, although she had been three or four times examined on the subject, and on every occasion attention was drawn to the point of the girl's night-dress. A piece of evidence, so significant, concealed so long, and disclosed so late, may well be looked upon with suspicion. But taking it to be strictly true, it comes to *nothing*, except that the girl *might* have removed the dress, which is equally true of every one else in the house, and especially of the servants. In this part of the case, therefore, there is no *confirmation* of the girl's confession. If, indeed, she had gone into detail, and disclosed what she did with one dress, and what with the other; how she got hold of one, and why, and when, and for what reason—then we should have been able to see how in these particulars her story tallied with the facts already in evidence, and *that* would have been confirmation.

But all this is withheld; and that is the great badge of suspicion about this confession or admission, and the great reason why it does not give satisfaction. There are no means of enabling us to determine, in the language of the learned judge, how far it is confirmed or contradicted by the other facts in the case. It is to be lamented that this should be so, and it *would not* have been so if the judge had had power to direct a plea of *guilty* to be entered. It is plain that he would have done so if he could, and we only wish that he had been able to do so. The public would have been far more satisfied. There never was a confession made under circumstances more suggestive of suspicion as to the probability of indirect motive. On the one side despair, and the mental torture of five years' suspicion, and, on the part of many, belief of her guilt, and the fatal incident of the missing night-dress,

may well have confirmed a feeling of despair in a mind weakened by years of depression, and exiled from home as a kind of outcast. Then, on the other hand, there were the most powerful motives to a false confession in the avowed anxiety to clear the father and brother; and all this, probably, coupled with a well-founded belief that she was not likely to be executed, and that her life was pretty certain to be spared, as it has been; and penal servitude of late years has lost many of its terrors. At all events, the unhappy girl was probably little less wretched than she is now; while, on the other hand, her wretchedness is mitigated and relieved by the reflection that she has acted heroically, and rescued her father and her brother from a crushing load of suspicion. It may be that she has committed an act of mistaken self-sacrifice, under the inspiration of despair. That she is not truthful nor credible as a witness is clear; for assuming her confession to be true, she committed perjury before; therefore she may be untruthful now; she is not reliable. There was the strongest motive to falsification, or she probably was under the influence of despair. She might well despair. If she be innocent, nothing could ever relieve her from suspicion except the confession of the real murderer. That was hardly to be expected, for *murderers rarely confess*. The real murderer alone could account for the missing night-dress; as for the weapon, and other means of perpetration or concealment. If she did the deed, she, and she alone, could have cleared up these matters. She has not done so. If she were *not* the murderer, she *could not* do so. As her avowed object would have been *promoted* by her doing so, her *not* doing so is of itself a circumstance of suspicion, and there is not a single fact in confirmation of her confession.

### Reviews.

*A Manual of the Practice of Conveyancing, shewing the Present Practice relating to the Daily Routine of Conveyancing in a Solicitor's Office. To which are added, Concise Common Forms and Precedents in Conveyancing, Conditions of Sale, Conveyances, and all other Assurances in constant Use. Third Edition, revised, and considerably enlarged. By G. W. GREENWOOD, Solicitor, and HENRY HORWOOD. 8vo., pp. 546.*  
[Stevens & Sons.]

*A Treatise on the Practice of Conveyancing. By WILLIAM WHITTAKER BARRY, of Lincoln's-inn, Esq., Barrister-at-Law, late holder of the Studentship of the Inns of Court, and Author of "A Treatise on the Statutory Jurisdiction of the Court of Chancery." "Dans la littérature par exemple, la mérite pratique domine encore," Guiz. Civ. en Fr. t. 1, 13. 8vo., pp. 545.*

MR. GREENWOOD's book is intended to be an elementary guide to solicitors' clerks in the practice of conveyancing, and has been, with great judgment, strictly limited to practical matters. Here are no meagre outlines of law, but straightforward explanations of the objects of the various conveyancing documents of ordinary occurrence, and statements of the provisions usually contained in them, and the precautions to be borne in mind in framing them. The precedents are generally well selected, but we must except from this praise two of the precedents of composition deeds, introduced for the first time in the present edition. The first is a transcript of the deed which formed the subject of litigation in *Clapham v. Atkinson* (11 Jur., N. S., part 1, p. 217; 4 B. & S. 722); which, though it was expressed to be made between the debtor of the one part, and "the undersigned cre-

ditors" of the debtor of the other part, and throughout spoke only in the name of the executing creditors, was yet held to extend to and bind the non-assenting creditors, because it stated that the undersigned creditors were "a majority in number, representing three-fourths in value of the creditors." Now, whether the decision was right or not, it is obvious that the deed was inaccurately framed, and ought not to be put forth as a precedent merely because it has stood fire. The second form is that which was pleaded in vain in *The Ipstone Park Iron Ore Company v. Pattinson* (10 Jur., N. S., part 1, p. 427), being in substance the form given in Schedule (D.) to the Bankruptcy Act, 1861, with the important difference, however, that the benefit of the deed was limited to the undersigned creditors, and with the addition of words which to us certainly seem to imply a release, but were held by the Court of Exchequer not so to operate, though the Court thought it might be made available as a protection from execution; and Martin, B., said, "With regard to the deed itself, so far from considering it void, I think it is the only good deed of the kind that has come before us, and that it has all the operation that such deeds were intended by the Legislature to have;" yet the operation and benefit of the deed were in terms limited to the undersigned creditors. We extract the following neat summary of the principal points decided on the enactments:—

"1. A deed of arrangement under sect. 192 of the act, must be, on the face of it, for the benefit of *all* the creditors, and not merely for those who execute it. (*Walter v. Adcock*, 10 Weekly Rep. 542; 31 L. J., Bank., 92; *Ex parte Morgan*, 32 L. J., Bank., 15).

"2. Such deed need not contain an assignment of all the debtor's property. (*Ex parte Morgan, re Woodhose*, 11 Weekly Rep. 316; *Ex parte Cockburn*, 33 L. J., Ch., 17; *Clapham v. Atkinson*, 33 L. J., Q. B., 81).

"3. It must be assented to by a majority in number, representing three-fourths in value of the *secured* as well as the *unsecured* creditors. (*Ex parte Golden, in re Skittle*, 32 L. J., Bank., 37; *Turquand v. Moss*, 12 Weekly Rep. 960).

"4. A composition deed must contain a release of the estate of the debtor, otherwise it cannot be pleaded in bar to an action, in respect of a debt for which a composition is payable under such deed (*Ipstone Park Iron Ore Company v. Pattinson*, 12 Weekly Rep. 344); and query, whether a deed could be framed with a covenant making it so pleadable, without rendering it void against non-assenting creditors. (S. C.).

"5. Such a deed if duly executed, and containing a release, may be pleaded in bar to an action by a non-assenting creditor. (*Whitehead v. Porter*, 12 Weekly Rep. 742).

"6. Every deed of arrangement between a debtor and the whole body of his creditors, must be registered under the 194th section, whether it be framed under the provisions of sect. 192 or not. (*Ex parte Morgan, supra*).

"7. The production of the registrar's certificate of registration is *prima facie* evidence that the conditions of the act have been complied with; but a creditor may produce evidence to shew the contrary, and may require that the deed be examined to see that the necessary assents have been given. (*Re Church*, 1 N. R. 86).

"8. To render a deed of composition and reliance binding on the meeting of the creditors who have not executed, or assented to or approved of it in writing, it is necessary that the non-assenting creditors should stand under the deed in the same situation, and with the same advantages, as the creditors forming the majority. (*Ex parte Cockburn*, 12 Weekly Rep. 673).

"9. The deed to be binding must be complete at the

time it is registered, and it cannot be subsequently executed by any creditor who had not previously assented to or approved of it in writing. (*Ex parte Cockburn, supra*)."

The greater part of Mr. Barry's work has already appeared in the *Law Times*. He states, in his Preface, that his object is "to afford a similar introduction to the practice of conveyancing as is already supplied, with reference to the principles of this branch of the law, by such writers as Watkins, Burton, Joshua Williams, or Josiah W. Smith," and he thus divides and arranges his subjects:—

1. Abstracts of title. 2. Agreements. 3. Particulars and conditions of sale. 4. Copyholds. 5. Covenants. 6. Creditors' deeds and arrangements. 7. Preparation of deeds. 8. On evidence. 9. Leases. 10. Mortgages. 11. Partnership deeds and arrangements. 12. Sales and purchases. 13. Settlements. 14. Wills. 15. The Land Registry Acts. 16. The Act for obtaining a Declaration of Title.

This arrangement is obviously immethodical and incomplete. Sales and purchases (what is the difference?) ought not to be separated from abstracts and particulars and conditions of sale. A chapter on the law of copyholds is out of place in a treatise limited to the practice of conveyancing, and many subjects (such as contracts for works or services, awards, mining leases, mercantile contracts, &c.) on which there is a dearth of practical information, are omitted. But the work is evidently the fruit of considerable study and labour, and as a compendium of ordinary information on conveyancing matters, brought down to the present time, will be found useful.

When Mr. Barry goes out of the beaten path in search of novelty, he is not always happy. For instance, in the chapter on the preparation of deeds we find the following suggestion:—

"It has often occurred to me, as a matter of regret, that the names of those counsel who have settled the drafts of deeds should not be affixed to the deeds themselves, in the same manner as is done with reference to bills in Chancery. The reason generally given for the latter practice is, that the Court will not entertain a suit unless some counsel has certified that it is fit that it should be entertained. It is probable that formerly the rule proposed some vitality, but this has long ceased to be, for the signatures of counsel to a bill has been reduced to a mere formality; indeed, were it otherwise, counsel would be acting as it were as preliminary judges, which would be exceeding the limits of their duty, and would not be beneficial to the public. In the case of deeds, however, much additional confidence would be felt in titles, if on examination of the abstract it were found that many, or all, of the assurances had been prepared by skilled hands; certainly such a course would have rendered the reading of abstracts more profitable to the student and junior practitioner. How pleasant it would be to meet with such honoured names as Butler, Duval, and Preston. As matters stand, it is easy, indeed, to distinguish the hand of a master, but the names of the draftsmen lie buried in obscurity."

Mr. Barry forgets that a bill passes directly from the pen of the draftsman to the file of the court without mutilation or change, and is the work of the draftsman's mind, untrammelled by anything but the circumstances of the case; but, in conveyancing, counsel is often bound by instructions of which he does not approve, and can never be sure that the symmetry and perfection, and even the essential operation of his draft, may not be marred by alteration from other pens.

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## THE JURIST.

LONDON, AUGUST 12, 1865.

THE question of the policy of allowing partners to limit their responsibility has made great progress, as social reformers say, since the year 1854, when the first report of the commissioners appointed to consider that question, and the practicability of assimilating the mercantile laws of England, Ireland, and Scotland, was presented. Probably the question has never received so full and fair a discussion as it did before that commission, which consisted of members of great ability and experience, namely, Sir T. B. Cusack Smith, then M. R. in Ireland, Sir Crosswell Crosswell, then one of the justices of the Common Pleas, Lord Curriehill, Mr. Baron Bramwell, then a Queen's counsel, James Anderson, Q. C., Kirkman Daniel Hodgson, Thomas Bazley, and Robert Slater. Questions were sent to seventy-six persons in the United Kingdom, selected, on the whole, with great judgment and impartiality. Questions were also circulated among the chambers of commerce of twenty of the principal towns in the kingdom. Other copies were circulated on the continent and in North America. The result of the inquiries and deliberations of the commission on the question of the expediency of allowing loans and services in trade to be repaid by a share of profits, without liability for debts, was, that they could not agree upon any conclusion; and some of the members delivered their opinions separately. Lord Curriehill, while he strongly disapproved of commandite partnerships, thought that there was no objection to loans at interest varying with profits, without liability beyond the amount of the loan—provided the loan was made for a fixed period, and if repaid before the appointed time, recoverable from the lender for the benefit of creditors. His Lordship concluded his remarks in these terms:—

"I by no means shut my eyes to the difficulties which the parties to contracts of loan or hiring on the footing above mentioned might experience in extricating their rights. But I would leave it to themselves to consider whether or not they would encounter these difficulties. And, of course, in any case in which it might be found that such a transaction is truly a partnership, under the colour of a loan, both parties would be liable as partners, without limitation, for all the debts of the concern."

Seeing that partnership is participation of profits, it is difficult to see how any other case than that suggested by the words in italics could ever arise under the modification of the law, which his Lordship was prepared to sanction, and which has since been effected.

Mr. Bramwell recommended,

"First, that persons be allowed, as of right, to form partnerships, limiting the liability of one or more, or all, of the partners.

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names, place and nature of business, term of partnership, and capital subscribed by the limited partner.

"Thirdly, that where the liability of all the partners is to be limited, the partnership should be incorporated on registration.

"Fourthly, that the partnership name should be used, and in such way as to indicate the limited liability.

"Fifthly, I need hardly say that I would allow money and services to be paid for by a portion of profits."

Whether the fact that money or services were so paid for should be publicly indicated, is not said.

Mr. Anderson's opinion agreed with that of Lord Curriehill, with the additional condition, that no special loan should be withdrawn without a year's previous notice.

Mr. Kirkman Daniel Hodgson agreed with Mr. Bramwell.

Mr. Slater disapproved of any limitation of partnership liability in ordinary trading companies or firms, and proposed to allow it only in companies formed for special objects of public utility; and he disapproved of allowing payment in profits for loans or services.

No opinion on the question was given by Sir T. B. Cusack Smith, Sir Crosswell Crosswell, or Mr. Bazley; but they, with Lord Curriehill and Mr. Slater, forming a majority of the commissioners, concurred in recommending that the privilege of trading with limited liability should not be allowed to all companies indiscriminately.

That privilege, however, was almost immediately afterwards conceded by the Legislature; but eleven long years passed before capitalists and clerks, pining for profits without liability, were told that they might have their desire. The question is set at rest, at least for the present; and our business is now to see how it has been settled, and whether an opening has been made for any other questions.

The 1st section of the Partnership Law Amendment Act (28 & 29 Vict. c. 86), enacts, that "The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits, arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such."

The contract for a share of the profits must be in writing. If you lend a basket woman the price of a chest of oranges, on condition of sharing her profits, and do not make her sign the contract, you become liable for all the debts of her stall:—otherwise, if she sign.

But if you carry the good woman's stock to and fro for her, or guard it while she gets her tea, for a like consideration, you do not thereby incur liability, though the contract be not evidenced in writing; for

"No contract for the remuneration of a servant or agent of any person engaged in any trade or under-

taking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner." (Sect. 2).

What then, henceforth, will be the indicia of partnership? Formerly the main inquiry was, "Who are entitled to the profits, and who hold themselves out, or allow themselves to be held out, as concerned?" but the inquiry as to taking profits is no longer material.

The effect of a contract of partnership without qualification is to give to each partner equal rights in respect of the management of the business, and to render each partner responsible for all the engagements of the concern. But a contract of partnership, like other contracts, may be made subject to special qualifications and conditions, variously modifying, abridging, or excluding the rights and duties of the partners, as between themselves; and it may even, as between the contracting parties, wholly exempt one or more of them from all the duties of a partner, and preclude him or them from exercising any of the rights of a partner, except only the right of sharing the profits, and, almost as a necessary consequence, the right at some time or times at least, and subject or not to some restrictions, to inspect the accounts; though even that right may be waived, the sleeping partner consenting to rely on the honour of the accounting party, or to accept his statutory declaration as the sole verification of his balance-sheet.

But in whatever way the partners may modify their mutual rights, and vary the fashion of their partnership contract, it was, until the 5th July, 1865, a settled principle of law, that, wherever there is a partnership—that is to say, a right to share profits, the persons who are entitled to the profits, however they may qualify their rights as among themselves, are all, with regard to third persons, principals in the business, and, therefore, are all primarily liable for its engagements. The only exceptions to this rule were cases where the personality of the individuals was merged in a corporate personality, or where the liability of the principals was expressly qualified by act of Parliament. We have now a further statutory exception, so extensive that the poor remains of the rule can scarcely be recognised; so mangled and mutilated are they that scarcely a vestige of common sense is left, and the best thing to be done will be to bury them out of sight, and erect over them a Parliamentary monument, with an inscription in whitewash, "To the memory of Debit, the soul of Credit;" and a suitable text from scripture, which we need not set forth.

Henceforth a writer on the law of partnership must state the rule as to partnership liability in terms to this effect:—

"Every person who is entitled to participate in the profits of a business is liable for all the engagements contracted in that business, unless the right is solely founded on a written contract to pay the share of profits in consideration of a loan, or on a contract to pay the share of profits in consideration of services or of the sale of the goodwill of the business, or the person taking the share of profits is the widow or child of a deceased partner."

The loan may be for a fixed or for an indefinite time, and if for a fixed time it may be repaid before it is due, if the parties agree. Whether "the advance of money by way of loan" extends to money's worth or not, will be a question. Whether A. actually pays over to B. one thousand pounds in money, or, having a right to demand from B. the present payment of a debt of that amount, agrees to forego payment for a certain time, seems to be indifferent; and unless it is held to be so, the act may become a snare even to those whom it was intended to favour; for if a loan is made under the act for a fixed period in consideration of profits, and after the time for repayment has passed the lender leaves the money in the business, and continues to receive his share of the profits, he is no longer taking profits in consideration of the advance of money, but he is taking them in consideration of the forbearance of a debt.

On the other hand, if the advance of money's worth is within the act, then a manufacturer may supply a dealer with all or a portion of the goods required in his business on the terms of sharing profits—a transaction which, probably, was not contemplated by the wisdom of Parliament, though it certainly was intended by the promoters of the bill. But if it should be held that money does not include money's worth, then, unless it is also held that the advance of money does not include the forbearance of a pecuniary debt, the difficulty may be got over by selling the goods to the trader nominally for prompt payment; and agreeing for a share of profits in respect of the balance left unpaid.

As the words "money or money's worth" are used in the 5th section, it seems that "money" was not understood to include money's worth.

There seems to be no difficulty in making arrangements which shall be clearly within the act. The difficulty is, to say what arrangements will not be within the act, and to construe agreements for partnership or division of profits.

In Richardson's Dictionary, partners are said to be "Persons associated to part, share, or divide what they may gain or possess;" and the first example is from Robert of Gloucester:—

"An ych mot ek of Engeland be thy partyner."

Suppose an agreement in writing between A. and B., stating that B. is engaged in a certain business, and stipulating that A. shall advance 1000*l.* to be employed in the business; that in consideration thereof the profits of the business shall be equally divided between A. and B.; that accounts shall be kept and be always open to the inspection of A.; that the accounts shall be annually balanced, &c. Here are some of the main provisions of a partnership deed, and though the word "partnership" is not used, the equivalent expression "division of profits" is used. Probably A. would not be held liable under the agreement for the debts of the business. But suppose a stipulation were added that A. should not be bound to give any assistance in the conduct of the business. He would not have been bound under the contract, if nothing had been said about it. The ad-

dition of this superfluous negative cannot alter his position. "True;" it may be said, "but the stipulation shews that the parties contemplated partnership." They contemplated a division of profits—the carrying on of the business for the benefit of A. and B.—capital furnished by A., management by B. That the act says is not partnership. So far seems clear. But proceed a step. Let the agreement not only provide for the division of profits, but also use the equivalent expression—"partnership." Let it be provided that A. and B. shall be partners in the business of —; that A. shall furnish the capital, B. the superintendence; that the profits shall be divided; that A. shall not be required to give any time or attention to the business. Is the case within the act? "Yes, they expressly agree to be partners." True, partners in profits; that the act allows. What is the difference between "partners in the business" and "partners in the profits of the business?" "But partnership is a technical term, and implies liability for debts." Very well; add a clause that A. is not to be liable for the engagements of the concern.—Will that neutralise the noxious word? "No; A. still has the rights of a partner. He may interfere in and control the business." Very well; stipulate further that he shall not; will the act then apply? Probably it will.

But under sect. 2, A. may agree and be bound to manage the business for B., and this agreement may be made:—

A. lives in London, B. in Paris; A. agrees to provide all the capital required to carry on a business for B. in London; further, to manage the business as "agent" for B.—to keep accounts, &c. B. agrees to adopt all A.'s engagements properly contracted in the business, and to indemnify him—not to dismiss him without a year's notice. To allow him for his capital three-sixths of the profits, for his services two-sixths more. This is within the letter of the act.

But let the agreement be differently framed; let it express that A. shall furnish 10,000*l.*, to be employed in carrying on the business of — in London; that B. shall furnish other 10,000*l.*; that A. shall manage and give all his time and attention to the business—shall not hire any servant or enter into any contract contrary to the expressed wish or direction of B.; that the profits shall be divided, &c.; that either party may determine the agreement by notice. What is this—a partnership, or a statutory contract? If it is a partnership, what makes it so? The stipulation that B. shall bring in 10,000*l.*? What would be the effect of an express declaration that there shall be no partnership? Which would then be liable to the creditors, A. or B., the firm being "X.?" In a partnership each partner is agent for the other, and shares the profits. Sect. 2 says, that an agent may share the profits and not be a partner.

We come at last to the conclusion that the problem may be thus expressed: "Ascertain who is the trader: who borrows the money, or employs the servant or agent"—a problem more easily proposed than solved, for we have to bring the sleeping capitalist and the active manager or agent into the same conception. The rationale of sect. 1 (if a positive enactment can

have a rationale) is, that A., who takes profits, but is not liable, is a sleeping partner—does not interfere. That of sect. 2 is, that A. is subject to orders, and can give none. But any partner may, by contract, be subject to orders; and no partner can give orders to a sleeping partner.

In the case of a loan, under sect. 1, the mere title to profits in consideration of the loan is not of itself to constitute partnership. What additional circumstances will change the relation—where there are, or where there are not, in the written contract, other provisions? Will managing the business, as an agent might manage it? Hardly, in the face of sect. 2. A partnership may be constituted dissoluble at will. In the meantime the lawful acts of each partner bind the others. An agency may be constituted dissoluble at will. In the meantime the lawful acts of the agent bind the principal. Which is which? Suppose the parties examined as to the terms of their contract, will the test be, whether or not the word "partnership" passed between them? How much power of imperative control may a lender stipulate for without becoming a partner? May he reserve a power to demand immediate repayment in case the borrower refuses to listen to his advice, or adopt his suggestions?

We have hitherto been dealing with the substance of the act. The 5th section is a little defective in form. It runs thus:—"In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any act for the relief of insolvent debtors [there is no such act], or entering into an arrangement to pay his creditors less than 20*s.* in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied." Suppose that the borrowing trader agrees to wind up his affairs under inspection? This is not an arrangement to pay his creditors less than 20*s.* in the pound, and under such an arrangement there is nothing to exclude the lender from taking a dividend with the other creditors.

## LAW REPORTING.

IN March last a preliminary address, with the above heading, bearing the signature of Sir Fitzroy Kelly, was circulated among the members of both divisions of the profession. It stated the appointment of the Bar Committee on the 2nd December, 1863; that they made their report in June, 1864, recommending a scheme; that in November, 1864, at an adjourned meeting of the Bar, the report was adopted; that in Hilary Term, 1865, the report and scheme were submitted to the several Inns of Court, Serjeant's-inn, and the Incorporated Law Society for their consideration; that the Benchers of Lincoln's-inn, the Inner Temple, and Middle Temple, and the Incorporated Law Society, had appointed members of the Council, in conformity with the scheme; and that Gray's-inn had declined, and Serjeant's-inn had not decided, to appoint members of the Council.

The ex-officio members were—The Attorney-Ge-

neral, the Solicitor-General, and the Queen's Advocate.

The elected members were—Sir Fitzroy Kelly, Knt., M.P., and W. T. S. Daniel, Esq., Q. C., of Lincoln's-inn; William Forsyth, Esq., Q. C., and George Markham Giffard, Esq., Q. C., of the Inner Temple; T. W. Greene, Esq., Q. C., and J. B. Karalake, Esq., Q. C., of the Middle Temple; W. S. Cookson, Esq. (firm—Clayton, Cookson, & Wainwright), 6, New-square, Lincoln's-inn, and William Williams, Esq., Vice-President of the Incorporated Law Society (firm—Currie & Williams), Lincoln's-inn-fields, of the Incorporated Law Society.

The address then proceeded as follows:—

"It is now proposed to invite the assistance and co-operation of the several branches of the profession, for the purpose of accomplishing the object involved in the resolutions of the Bar.

"There are published at the present time six independent sets of Reports:—1. The Regular Reports. 2. The Law Journal. 3. The Jurist. 4. The Law Times. 5. The Weekly Reporter. 6. The New Reports. The present cost of all these Reports is about 50*l.* per annum; the cost of the regular Reports alone is about 30*l.* per annum. The multiplicity of the Reports, apart from the cost, occasions the evils of which the profession complain. The remedy proposed is—the establishment, under the management and control of the profession, of ONE SET OF STANDARD REPORTS, upon the basis of a fair regard for existing interests. One complete set of Reports, prepared with the requisite learning, skill, and care, and published with expedition, regularity, and at a moderate cost, is all that is required for citation as authority.

"It needs, surely, no argument to prove how deeply the interests of the public are concerned in the certainty of the law; or how important it is, that the judge who decide, the counsel who advises, and the solicitor under whose guidance the client acts, should all be regulated by one of the same standard of authority. If the legal profession in its several branches co-operate for the purpose, such a set of Reports may be obtained, and their continuance secured under public professional control.

"The proposed Reports would be divided into three series:—

- "1. Appellate—comprising the House of Lords and Privy Council;
- "2. Chancery—including Bankruptcy Appeals and Lunacy;
- "3. Common Law—including the Probate, Matrimonial, Admiralty, and Ecclesiastical Courts."

And then we have the following further announcement:—

"Arrangements have been made for the reception of the names of those who may be willing to become subscribers to a set of Reports to be established with the above objects; but in order that this may be done, it is requisite that 2000 subscribers for the entire series, or a subscription of 10,500*l.* per annum at the least, should be obtained.

"The question of the establishment of the proposed set of Standard Reports is one entirely for the profession to determine, and to their determination it is now submitted.

"Forms of subscription will be circulated, and it is hoped that future proceedings may be decided upon not later than the last day of Trinity Term, the 15th June next.

"In the event of subscriptions to a sufficient amount being received, endeavours will be made to arrange that the Reports commence as from the first day of Michaelmas Term next.

"Names of subscribers will be received and recorded

by James Thomas Hopwood, Esq., No. 3, New-square, Lincoln's-inn, Secretary pro tem."

The next intimation on the subject is contained in the following advertisement, which appeared in the last number of THE JURIST (August 5):—

#### "Council of Law Reporting.

"At a meeting of the Council, held on the 1st August inst., Sir Fitzroy Kelly in the chair, it was unanimously resolved, that the series of Reports in the Superior Courts of Law and Equity, and the Appellate Courts, proposed to be established under the superintendence of the Council, be commenced as from the first day of Michaelmas Term next, and that the necessary arrangements be forthwith made for that purpose.

"The approval of the scheme by the Lord Chancellor and others of her Majesty's judges was communicated to the Council.

"A sub-committee was authorised to receive proposals for the appointment of editors and reporters, subject to the approval of the Council at a future meeting.

"Persons intending to subscribe to the Reports are requested to communicate with the Secretary, James T. Hopwood, Esq., No. 3, New-square, Lincoln's-inn.

"By order,

"Fitzroy Kelly, Chairman.

"Lincoln's-inn, Aug. 3, 1865."

Now, it is very desirable that the scheme recommended by the Bar Committee, and substantially adopted by the Council of Law Reporting in the address of the 11th March, should be carried into effect. But it is equally undesirable that a seventh series of Reports should be commenced without adequate foundation and support.

The representation of the preliminary address was, that a subscription of 10,500*l.* per annum at the least would be necessary; and it was added that the question of the establishment of the proposed Reports was entirely for the profession to determine. The subscriptions which have been sent in on this address are clearly conditional on a sufficient list being made up before they take effect. Subscriptions sent in under the advertisement of August 3, do not appear to us to be subject to any such condition. The distinction is important. If 2000 lawyers subscribe to a series of Reports, there is every reason to expect that the series will always be supported to that extent, and will ultimately make its way, and extinguish or absorb its rivals. Such a subscription will enable the managers to offer at once to the reporters a fair remuneration, with prospect of increase. But to commence a new series of Reports on a subscription materially less than 10,500*l.* per annum, implies either a permanent guarantee—which will certainly cease after a short trial, or very inferior and precarious remuneration to the reporters—if indeed all or some of them do not accept the terms on which a contemporary is said to have commenced, and may, for aught we know, be proceeding—of paying to its reporters what its profits may afford—the amount being probably nothing. Such an undertaking is entirely different from that suggested by the preliminary address, and we conceive ought not to be encouraged, or indeed tolerated. No doubt the Council's position is difficult; and the main difficulty lies, we believe, in the inertia rather than the indifference of the profession. But unless they obtain from bonâ fide subscribers such an amount of support as will enable them to offer acceptable terms to the authorised reporters, or procure in lieu of subscriptions such a guarantee as the authorised reporters will trust, we do not see how they can with propriety commence operations. To create a new staff

of reporters, where there are already six, would be absurd; to start with inferior or inexperienced hands, would be to give to the profession something very different from the "Standard Reports" which have been projected.

We think that the Council owes both to those who have sent in their names upon the address of March, and to those who are invited by the advertisement of last week, some explanation of the financial position of the undertaking, and of the arrangements, if any, which have been made, or are proposed, with the authorised reporters.

## JURY DE MEDIETATE LINGUÆ.

### OXFORD CIRCUIT.

CROWN COURT.—(Before CHANNELL, B.)—July 9.

Samuele Giorgetti was indicted for the wilful murder of Thomas Kelly, on the 27th May, at Newport.

Mr. G. Somerset and Mr. A. S. Hill were for the prosecution.

Mr. Matthews and Mr. H. James were for the prisoner.

The prisoner was an Italian, and claimed a jury de medietate linguæ. As the jurymen were being called, it soon became evident that there would be considerable difficulty in getting a jury, from the number of objections raised on the part of both the prisoner and the Crown.

HIS LORDSHIP accordingly had the panel gone through, by calling the names of the jurors; but upon objection raised, they were ordered to stand aside without going into the box. At length the panel was gone through, and nine jurors, without objection, were called into the box. Of these, six were Englishmen and three were foreigners. His Lordship then ordered three more foreigners and aliens to be called. It appeared that some foreigners and aliens had been returned on the ordinary jury panel for the purpose of this trial. One of these foreigners was then called. The Crown objected peremptorily to him, and wished him to be ordered to stand aside.

Mr. Matthews then urged, that upon the statute of the 28 Edw. 1, c. 13 (by which the right was given to have half the jury composed of foreigners, if possible), and upon the 6 Geo. 4, c. 50, the Crown had no right to challenge a foreigner without assigning cause, and that the reason of the thing required the same decision; and further, that the panel had been exhausted by calling out the names of the jurors, and ordering them to stand by, and, therefore, the Crown could no longer challenge without cause.

To this it was replied, on the part of the Crown, that the name of this juror being on the ordinary jury panel, it must be taken that he was naturalised, and not a foreigner; and that the panel had not been exhausted, because the order to stand aside was not equivalent to the giving of a challenge; and further, that the Crown had a right to challenge peremptorily a foreigner, just as any Englishman.

HIS LORDSHIP said that the panel was not exhausted by the standing by of the jurors, and that would only take place when the challenges had been given; and (after consulting Mr. Justice Byles) said, that the spirit of the statute was to secure six foreigners in addition to six Englishmen. That the sheriff was to get the former, either by going out into the streets or in some other way; and if he could not get that number, to get as many as possible to make up the twelve. And that in this case either party had a right to challenge, but that the Crown had only a right to challenge for cause.

The Undersheriff then returned a supplemental pa-

nel of foreigners; and upon the name of Dominic Mafia being called, the Crown objected, on the ground that he was a native of the same State to which the prisoner belonged, and that he was about to return there, and had publicly stated, that if he found the prisoner guilty his (the juror's) life would not be safe when he got back to his State. His Lordship ordered two triers to try the truth of this challenge, when it was discovered that the prosecution had mistaken this juror for his brother, and the objection was accordingly withdrawn, and the juror called to the box. The officer of the court then gave him the book, and recited the oath to him, but as the juror was about to raise the book to his lips, and before he had done so, he took the same objection that had been raised for him and withdrawn. It was then suggested that he had already been sworn; but his Lordship ruled that he had not. The prosecution had then put the cause of challenge in writing, when his Lordship stated, that upon reconsideration, and upon looking at several cases mentioned in Joy, of Confessions, which had been handed up to him, he thought that the juror had really been sworn, although he had not kissed the book; and therefore the challenge was too late. The juror then kissed the book. After some further difficulty with respect to another foreigner who had been put on the ordinary panel, and the lapse of two hours and a quarter, a jury was sworn, and the trial commenced.

## SUMMER ASSIZES.

HOME CIRCUIT.—CARDON, August 9.

Three courts sat to-day, as every day this week—the first before Mr. Justice Crompton, the senior judge, for special jury cases; the second, before Mr. Baron Pigott, for common jury cases; and a third before Mr. Hawkins, Q. C., also for common jury cases. Several cases were tried or disposed of in the latter two courts, none of which were of any public interest; but the first court was occupied all day with a case which had already taken up part of yesterday. This case was an instance of what was stated yesterday, that if half or even a third of the cases were tried the assizes would not be over till the middle of September, and that the fact is that the causes are disposed of otherwise than by trial, simply because there is not time to try them without waiting here half or all the vacation, and incurring an enormous expense for the maintenance of witnesses, which in many cases would more than outweigh the whole amount in dispute. Already witnesses have been kept waiting in many cases for several days, and as the expense becomes unbearable the parties succumb and settle, or in some way or other take their cases away. Yesterday and to-day several cases, each of which would have taken several days to try, were thus withdrawn. This is the more natural, as most of the cases—indeed, almost all of them—have nothing to do with the county. In the course of the day the venue was changed by consent; thus taking the cases back again to their proper counties, after all the expense of bringing them down here, and waiting here for several days, had been already and uselessly incurred. Of course, if cases are settled or disposed of by mutual agreement, they may be disposed of in any time, and twenty cases may be got rid of in an hour; and it may be easily understood that the rate at which causes go in this way is in the ratio of the delay and expense which the parties have suffered, and is likely to increase every day the assizes last; so that, in truth, when once it is ascertained that cases cannot be tried the rapidity at which they are got rid of may become greater as the assizes draw towards an end. So many cases were thus settled,

withdrawn, or disposed of in the course of yesterday and to-day that at the close of the day not above fifty-four cases remained, of which about fourteen were special jury cases. Of these, however, more than one are known of likely to last a day each, so that it is still possible the business may not be concluded this week. On the other hand, if some of those which remain should be withdrawn, settled, or disposed of without trial, it is quite possible that the business may be over by the end of the week, in which case the assizes will have proved one of the shortest known here, for the very same reason from which it was likely that it would prove one of the longest, viz. the great number of the cases entered for trial—a number so great as to render parties indisposed to wait long enough to get their cases tried, especially as almost all of them, with their witnesses, had to come down here from London or some other county. As regards the rate at which cases are tried, it will be seen the special jury cases take at least a day a piece to try such of them as are tried.—*The Times*.

**COMMON-LAW BUSINESS.**—The annual return made to the Home-office shews that Westminster-hall has no reason to complain of want of business. 113,158 writs of summons were issued last year from the Courts of Queen's Bench, Common Pleas, and Exchequer; the average is very little over 100,000. The great mass of these claims are settled, and in only about a fourth of them is any appearance entered for the defendant; but more causes were brought to trial last year than usual—1219 at Westminster and Guildhall, and 1035 at the assizes. The plaintiff got a verdict in more than two-thirds of the causes tried, including those which were undefended, and which constituted a fifth of the whole number in London and Westminster, where alone they are distinguished in the returns; the defendant won the day either by verdict in his favour or by nonsuiting the plaintiff, in nearly a sixth of the causes; and the rest were disposed of in various ways—175 referred to arbitration, 38 sent to the full court for argument on a special case, in 86 a juror was withdrawn by consent and no verdict asked, and 35 were puzzling cases in which the jury had to be discharged, unable to agree upon a verdict. One cause on circuit is returned as made a remanet pro defectu juratorum. 17,676 writs of execution against goods were issued from these courts in the year, and 7242 writs of capias for taking the person in execution upon a judgment obtained; the aggregate is above the average, but the latter number is below it. Of the business transacted in full court a just idea can hardly be given by numbers; but it may be noted that in 348 cases application was made for a new trial, or otherwise altering the verdict, and in 110 the application was after argument granted; 308 other special motions were made, and in 236 of them a rule nisi was granted to be afterwards argued by both sides; 54 special cases were heard, 89 demurrers, 14 appeals from decisions of revising barristers. The Court of Queen's Bench had also its Crown-side business to dispose of. The business done in the year at the chambers of the judges did not equal the average amount, but there were 41,123 summonses issued, and 17,826 affidavits or affirmations made; there were 3810 attendances of counsel.

**THE CHANCERY VACATION.**—Yesterday the Chancery vacation commenced, and will terminate on the 26th October. The office of the Accountant-General will close on the 18th instant, and during the vacation will be reopened for a few days, for the payment of the October dividends. Vice-Chancellor Wood is the vacation judge of the Court of Chancery.

This day is published, price 7s. cloth boards,  
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"\* In the debate on the proposed consolidation of the Statutes, on the 9th February, 1854, Lord Campbell said, 'that the Statutes at large extended to about fifty volumes folio, but all the Statutes which were usually required by lawyers for reference might be found in three octavo volumes, compiled by his learned friend Mr. Welsby. When he (Lord Campbell) was upon the Bench, he always had this work by him, and so Statutes were ever referred to by the Bar which he could not find in it.'"

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# THE JURIST.

LONDON, AUGUST 12, 1865.

OF the many doubtful questions which have arisen under the 192nd, and eight following sections of the 24 & 25 Vict. c. 134, one not the least difficult of solution is, as to the validity and effect of a deed of arrangement, under the 192nd section, between joint debtors, and their joint and separate creditors, when such joint debtors have both joint and separate estates. It is provided by the 197th section of the said act, that "from and after the registration of every such deed" (i. e. a deed under the 192nd section), "all parties bound thereby shall, in all matters relating to the estate and effects of such debtor, be subject to the jurisdiction of the Court of Bankruptcy, and shall respectively have the benefit of, and be liable to, all the provisions of this act, in the same or like manner as if the debtor had been adjudged a bankrupt, and the creditors had proved, and the trustees had been appointed creditors' assignees under such bankruptcy; and the existing or future trustees of any such deed or instrument, and the creditors under the same, shall, as between themselves respectively, and as between themselves and the debtor, and against third persons, have the same powers, rights, and remedies, with respect to the debtor and his estate and effects, and the collection and recovery of the same, as are possessed, or may be used or exercised, by assignees or creditors, with respect to the bankrupt, or his acts, estate, and effects in bankruptcy; and, except where the deed shall expressly provide otherwise, the Court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorised to do, if the debtor in such deed had been adjudged bankrupt, and his estate was administered in bankruptcy."

Now, in bankruptcy, when joint debtors, having joint and separate estates, become bankrupt, distinct accounts must be kept of the joint estate, and also of the separate estate or estates of each bankrupt, and the separate estate will be applied in the first instance in satisfaction of the debts owing to the separate creditors, and, in case there be an overplus of the separate estate, such overplus will be carried to the account of the joint estate; and in case there be an overplus of the joint estate, such overplus will be carried to the account of the separate estates of each bankrupt, in proportion to the right and interest of each bankrupt in the joint estate. (See the Orders in Bankruptcy, 19th October, 1852—order 54; and, also, the General Orders in Bankruptcy, 1861—order 96). The question, therefore, that arises is, whether a deed so framed as to interfere with the above-mentioned principle of distribution in bankruptcy, can be a valid deed under sect. 192 of the Bankruptcy Act, 1861, and pleadable as a defence in an action at law against the debtor by a mere assenting creditor. A recent decision on the subject has made a distinction, under such circumstances, between a deed of composition and a deed of assignment. We

refer to the decision of the Court of Exchequer in the recent case of *Walker and Others v. William Nevill and William James Nevill* (11 Jur., N. S., part 1, p. 246). In that case the plaintiffs sued the defendants on a joint and several bond, to recover the sum of 10,000*l.*; the defendant William Nevill pleaded that he had entered into a deed of arrangement, under the 192nd section of the Bankruptcy Act, 1861. The deed was set out in the plea, and was made between both the defendants and all their creditors, and it shewed that there were joint and separate creditors, and joint and separate estates, of the defendants, and that a uniform composition was to be paid both to the joint and to the separate creditors. The plea then contained an averment, that "a majority in number, representing three-fourths in value of the said creditors of the defendants, and each of them, executed the indenture; or in writing assented thereto, or approved thereof." To this plea the plaintiffs replied specially, "that there were joint creditors and also separate creditors, and that the defendants were possessed of joint property and estate, and each of them was possessed of separate property and estate." The plaintiffs also demurred to the plea. The Court decided that the plea was good; that the deed was clearly within the meaning of the 192nd section of the Bankruptcy Act; and that, being a deed of composition, and not of assignment, the 197th section did not apply; in other words, that there was no objection in such a case to the joint and separate creditors being put upon the same footing, and receiving composition at a uniform rate. With regard to this branch of the case, the Court said, "Whatever weight there might be in the objection, as applicable to a deed of assignment, where the property is to be distributed, but at the same time a distribution according to the law of bankruptcy, as applicable to joint and separate creditors and joint and separate estates, is excluded, we think that it does not invalidate a deed of composition and inspectorship good within the 192nd section; and we think that the words of the 197th section, which we have been considering, may be so read as to be inapplicable to a deed of composition, however they may apply to and affect a deed of distribution." Another objection was raised by the plaintiffs, that the deed ought not to be held to bind non-assenting creditors, unless a majority in number, representing three-fourths in value of each class of creditors (i. e. of the joint and of the separate creditors) had assented. It is to be observed, however, on this point, the Court did not offer any opinion, but said that they thought that the allegation in the plea, that a majority of the said creditors of the defendants, and each of them, assented, was a sufficient averment of such assent by the requisite number of creditors of each class.

On the whole, assuming that it was the intention of the Legislature, that partnerships should be discharged from their liabilities, by entering into arrangements of this nature, we do not see any reason to impugn the decision of the Court of Exchequer in this important case. It appears impossible to read the 197th section of the Bankruptcy Act, and say, that it was intended to apply to any case other than that

of an assignment, collection, recovery, and distribution of a debtor's estate. Hence, if the deed be a deed of composition within the 192nd section, no valid objection can be raised on the ground, that the joint and separate creditors are put upon the same footing as to the amount of their composition, and the order of distribution observed in the Courts of Bankruptcy thus interfered with. With respect to the number of assenting creditors to deeds of composition and assignment of the nature now in discussion, it seems to be only a just and equitable interpretation of the words of the statute—"a majority in number, representing three-fourths in value of the creditors," &c., to define them to mean a majority &c. of the joint creditors, and also a majority of the separate creditors. It would certainly seem to be unjust to allow all the separate creditors, with a sufficient number of the joint creditors, to constitute a majority to bind the rest of the joint creditors, or vice versa. By consenting to a deed of composition, in some cases the joint, and in other cases the separate, creditors, will receive less in discharge of their debts than if the debtors became bankrupt, and their joint and separate estates were distributed according to the rules in bankruptcy. In order, therefore, that non-assenting creditors may be bound, and prevented from taking what they would be entitled to receive under such rules, it is only fair that a consent of a majority of each class should be first obtained. And here we may refer to the case of *Ex parte Cockburn* (10 Jur., N. S., part 1, p. 573), wherein this question was adverted to; and the Lord Chancellor said—"In this case I am obliged to assume that there is no joint estate, because it lies at the very foundation of this objection" (that a majority of the joint creditors had not assented) "that there should be a joint estate. If there had been any joint estate, there might have been some weight in the objection." These remarks shew the tendency of his Lordship's opinion. The result is, that until the Courts pronounce an opinion opposed to the view above suggested, the only safe course for practitioners will be, to obtain the assent of a majority of each class of creditors.

Having thus far considered the question, so far as regards composition deeds, we will now turn to deeds of assignment between joint debtors (having joint and separate estates) and their creditors. The Court of Exchequer in the case of *Walker v. Nevill*, expressed no decided opinion as to whether the deed in that case (making the same provision for both joint and separate creditors) would have been valid, supposing it had been a deed of assignment. In the case of *Leonard v. Sheard* (5 Jur., N. S., part 1, p. 1050), the defendants, being joint debtors, pleaded a deed of assignment under the 224th section of the Bankrupt-law Consolidation Act, 1849, whereby they conveyed all their joint and separate estates to trustees, upon trust to pay the trust moneys (after payment of expenses) among themselves and the other creditors of the defendants, and to pay the ultimate surplus (if any), and also the dividends of such of the creditors who should not execute the deed, to the defendants. The plaintiffs replied, that there were separate creditors

to the amount of more than 10*l*. To this the defendants rejoined, and demurred. The Court of Queen's Bench held that this deed was invalid, for under the Bankrupt-law Consolidation Act, 1849, sect. 228 (as by the Bankruptcy Act, 1861, sect. 197), joint and separate estates under deeds of arrangement, were to be distributed in like manner as in bankruptcy. And Erle, J., said, "By the deed, the joint and separate property, and the joint and separate assets of the defendants, are assigned to the trustees, and the trusts provide for the distribution of the estate among the joint creditors. In a case of bankruptcy the joint assets would be distributed among the joint creditors, and the separate assets among the separate creditors. Therefore, a distribution of joint and separate assets among joint creditors only, is not in conformity with the bankrupt law." As there is no decision on this point under the Bankruptcy Act, 1861, it is, at all events, safer, in drawing such deeds, to adopt the doctrine which the Court laid down in *Leonard v. Sheard* as the rule of interpretation of the 197th section of that act. The probability is, whenever a case of this kind should arise, a deed of assignment, made by joint debtors having joint and separate estates, must, in order to be held a valid deed, substantially provide for the distribution of the joint estate among the joint creditors, and the separate estate among the separate creditors. In *Shell v. De Mattos* (3 H. & C. 30) there was a clause introduced into the deed as follows:—"1. That the said estate shall be administered in accordance with the principles of the present bankrupt law in England, or as near thereto as circumstances will permit, having regard to the terms of these presents." It would seem that even such a clause would not, on the above view, be sufficient, inasmuch as circumstances, or the terms of the deed, might limit the known order of distribution in bankruptcy, and that nothing short of the unqualified and unconditional adoption of the principles of distribution in bankruptcy would be sufficient. If this be so, the trustees under a deed of assignment for distribution of an insolvent estate must adopt the principles of the Court of Bankruptcy; and though with regard to the machinery of the court there may not be, in the case of assignments by separate debtors, any occasion to resort to it for aid, yet in the case of firms, where there are joint estates and separate estates, and all the complications that necessarily attend the adjustment of the affairs of a partnership in difficulties, the interposition of the Court of Bankruptcy would appear to be inevitable; and it would all appear to come to this—that a deed of assignment for distribution under sect. 192, is either inapplicable to partnership concerns, or only applicable by the scheme being worked out by the Court of Bankruptcy, and being a bankruptcy in fact, though not a bankruptcy by name.

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THE RECORDERSHIP OF FALMOUTH.—By a recent act of Parliament the office of recorder is abolished, and the borough court is to be discontinued. All the prisoners are to be removed to Cornwall county prison. The recorder is to receive his salary for life, or until the receipt of another appointment. The act is to take effect on the 1st January.

## Correspondence.

## LAW REPORTING.

TO THE EDITOR OF "THE JURIST."

SIR,—In reference to the article upon Law Reporting, which appeared in THE JURIST of the 12th inst., I would desire to state, that materials were submitted to the council, at the meeting on the 1st inst., which, in the unanimous opinion of those present, called for the resolution, "that the Reports be commenced as from the first day of Michaelmas Term next." In pursuance of the scheme of the Bar Committee, the offer has been made to the existing authorised reporters, of the appointments in their respective courts, and I have no reason to doubt but that, with probably only one exception, all those gentlemen will concur in the proposed arrangement. I am happy to say that the existing authorised reporters of the House of Lords, the Courts of the Lord Chancellor, Lords Justices, Vice-Chancellor Kindersley, Vice-Chancellor Stuart, Vice-Chancellor Wood, the Court of Common Pleas, and the Court of Probate and Divorce, have already accepted the offer made to them; so that their respective publications will, at all events, cease, as from Michaelmas Term next, except as to arrears, with which the council have nothing to do.

Any appointment that may not be filled by any existing authorised reporter will, I have no doubt, be given to gentlemen of known professional ability and experience in reporting, of whom there are, as might be expected, many who are anxious to forward the public objects which the council are endeavouring to accomplish.

In the absence of express authority from the council, the members of which are now scattered for the Long Vacation, I do not feel justified in stating in your columns the details of the materials upon which the council were led to the resolution of the 1st inst., but I may state generally, that they involved financial security, and the highest judicial and professional sanction.

There has been no secrecy or mystery about the arrangements; they have been generally communicated to persons interested, and, I believe, have given satisfaction to all those who think the Bar scheme a desirable plan of amendment.

The complete and final arrangements will, no doubt, be made in October, when the members of the council will be able conveniently to meet again.

I have the honour to be,

Your obedient servant,

JAMES T. HOPWOOD,

Secretary.

3, New Square, Aug. 15, 1865.

[We are very glad to receive the explanation contained in Mr. Hopwood's letter, an explanation needed to justify, and fully justifying, the resolution of the council. The concurrence of the regular reporters and the sanction of the judges will satisfy the scruples of all who were standing aloof from fear of a seventh plague. We congratulate Mr. Daniel on a success which may now be considered as secure, and which is almost entirely due to his able and persevering conduct of the agitation.]

## INFANTICIDE.

TO THE EDITOR OF "THE JURIST."

SIR,—Mr. Justice Willes, in his able charge to the Grand jury at Wells (reported in the *Times*, Aug. 9),

drew attention to a defect in the law, which has often caused a failure of justice. In a large number of cases of child murder, the question arises as to whether the child when it was killed had "a separate and complete existence." In *Reg. v. Brain* (6 Car. & P. 349), Mr. Justice Park, in summing up, said, "A child must be actually wholly in the world in a living state to be the subject of a charge of murder; but if it has been wholly born, and is alive, it is not essential that it should have breathed at the time it was killed, as many children are born alive, and yet do not breathe for some time after their birth. But you must be satisfied that the child was wholly born into the world at the time it was killed, or you ought not to find the prisoner guilty of murder."

And a child is considered "wholly born," although attached to the mother by the umbilical cord. (See *Reg. v. Trilloe*, 2 Moo. C. C. 260). This had been previously doubted. The defect, however, in the law pointed out by Mr. Justice Willes still remains in this country, although in India the subject has been dealt with, and the law amended.

The Indian Penal Code passed by the Legislative Council in 1860, enacts, that "the causing of the death of a child in the mother's womb is not homicide; but it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed, or been completely born." (Explanation 3 to sect. 299). The learned editors of this Code, Mr. Morgan and Mr. Macpherson, in a note, make the following comment upon this section:—

"Instead of an uncertain period, which it would be difficult to define satisfactorily, and which would in many cases of infanticide greatly add to the difficulty of proof, a definite and readily ascertained point of time (that is, the time when any part of the child is brought forth) is fixed, to denote when the child may become a subject of culpable homicide.

"If no part of the child has been brought forth, any bodily injury which it receives, however criminal, does not constitute an offence under this section; though it may be an offence under subsequent provisions of the chapter (see sects. 315 and 316), and this, whether such injury prevents the child from being born alive, or causes the death of the child afterwards. If any part of the child has been brought forth, the causing of its death may amount to culpable homicide—not because the child in this state has necessarily, and in all cases a more independent existence than while it is wholly unborn, or because it is now more likely to live than before (for the part first brought forth may be such as to put the child's life in great peril), but, as we have already seen, because this is a definite period of time."

One of the sections referred to, sect. 315, is as follows:—

"Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description, for a term which may extend to ten years, or with fine, or with both."

Sect. 316 is as follows:—

"Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine."

Illustration (which is part of the Code):—

"A., knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of the quick unborn child with which she is pregnant is thereby caused. A. is guilty of the offence defined in this section."

In a letter from R. B., which appears in the *Times* of the 10th August, he states, "I know, moreover, that there is a very common idea among the ignorant, that if an infant is not allowed to breathe at its birth, it is not alive, and, therefore, cannot be said to be murdered, if not allowed to breathe."

There can be little doubt that "the common idea among the ignorant," alluded to by R. B., has arisen from the application of what is termed the hydrostatic test, i.e. evidence derived from the lungs, floating or not floating in water, for the purpose of proving whether a child has or has not respired.

Dr. A. S. Taylor has pointed out in his well-known work on Medical Jurisprudence, that this test is no more capable of shewing that a child has been *born alive or dead*, than it is of proving whether it has been murdered or died from natural causes; but that it is of course useful for the purpose of shewing whether a child has *breathed*.

It is somewhat remarkable, that the evidence given upon trials for child murder, as to the floating power of the lungs, should have caused the ignorant to believe that a child which had not breathed might be murdered with impunity.

H. B. P.

#### INFANTICIDE.—THE INDIAN PENAL CODE.

THE provisions and illustrations contained in the Indian Penal Code, with respect to infanticide, exposure, and concealment of birth, are as follows:—

299. Whoever causes death by doing an act, with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

*Explanation 3.*—The causing of the death of a child in the mother's womb is not homicide; but it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed, or been completely born.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description, for a term which may extend to ten years, or with a fine, or with both.

316. Whoever does any act under such circumstances that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.

*Illustration.*—A., knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of the quick unborn child with which she is pregnant is thereby caused. A. is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description, for a term which may extend to seven years, or with fine, or with both.

*Explanation.*—This section is not intended to prevent the trial of the said offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

#### DESCENT.—LIMITATION TO THE HEIRS OF SETTLOR.

THE Inheritance Act (3 & 4 Will. 4, c. 106, s. 5) enacts, "that when any land shall have been devised by any testator who shall have died after the 31st December, 1833, to the heir, or to the person who shall be heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited by any assurance executed after the said 31st December, 1833, to the person or to the heir of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate, or part thereof."

The old rule was, that under a devise to the testator's heir, or in trust for his heir, the heir took by his elder title as heir, and not under the will; and even on the devise of an estate which had descended to the testator from his mother to the person who was the testator's heir on the mother's side, the heir took by descent, and not under the will; and under a feoffment or grant to the use of the feoffor or grantor and his heirs, the descent was not changed.

In the case of a devise of an estate inherited by the testator from his mother to his heir, the act says, that the heir shall take by purchase and not by descent, but it provides no express solution for the question, "Which heir was intended to take?" In a matter so purely arbitrary as the rules of descent, it is impossible to make any inference of intention as to a *casus omissus* beyond, at most, such inference as may be required either for the sake of symmetry or to avoid some gross absurdity. The Legislature has said that the devisee is to take by purchase; in other

words, that on the death and intestacy of the devisee the devisee's heir general shall take by descent. But it has given no rule for ascertaining the devisee himself. Mr. Hayes, in his comment upon the act, distinguishes between a devise to the *heir* (whether by name or by description as heir) and a devise to the *heirs* of the testator, and observes, that "the legal import of a limitation by will to the heirs or right heirs generally (as distinguished from a devise to the individual heir) of the testator, which does not appear to be altered by the act, is equivalent to a declaration of intestacy, as regards the estate to which it applies." We venture to think that this is not so, and that whether the testator devises to his heir, or his right heir, or to his heirs, or his right heirs, the enactment applies, and gives effect to the devise. Coparceners make one heir, but they may properly be described as heirs, and if the testator has daughters as his heirs presumptive, or is disposing of gavelkind lands, he will naturally use the word "heirs." The application of the enactment ought not to be governed by such nice distinctions. If a testator uses words of gift, effect should be allowed to the gift. If, instead of giving the estate to his heir, he says, "I leave my estate at —, to descend to my heir," then clearly there is no gift within the statute.

In *Davis v. Kirk* (2 Kay & J. 591) a testator, by a will dated in 1845, devised the residue of his real estate to a trustee, upon trust to pay the rents to his wife during her life; and after her decease, to convey the residuary real estate to such person as should answer the description of his heir-at-law. Part of the testator's real estate was copyhold, which had descended to him from his mother. Sir W. P. Wood, V.C., held, that the customary heir *ex parte paternâ* was also the heir-at-law. "The expression," he said, "heir-at-law" is somewhat strong; but independently of that, the fact of the testator having divested the inheritable quality of the estate by breaking the descent entirely, and giving the estate to the trustees, and leaving them to find out the heir, has put them under an obligation to look upon the heir as a *persona designata*; and they cannot regard the inheritable quality of the estate, but they must find out the person who answers the description of heir-at-law of the testator. I think that there is not any authority precisely in point; but the principle must be, that when once the descent is broken by a devise of the whole fee-simple to trustees, upon trust to convey it to the testator's heir, they are bound to convey it to the person who is heir of the testator according to the common law."

The question clearly is, as to the construction of the will, and not as to the effect of the statute; and though formerly a devise of the testator's maternal inheritance to his heir would not have operated, although a devise of the estate to the person who was actually his heir *ex parte paternâ* would have operated, the old authorities, which proceeded on the ground of preferring a descent to a devise, cannot be considered as applicable to a state of things in which a devise is preferred to a descent. Technical reasoning might point to the heir to whom the estate would descend as the proper object of the devise: the subject of gift being a descendible estate, and the donee being described as the person who would take by descent, it would seem that the person who would take that particular estate must be the object. But on the other hand, the expression is applicable to the heir general; and he is the person who is most commonly in the contemplation of a testator as being his heir, and most likely to have been intended as the object of a gift to the heir. And, though a gift of pure personality to the heir of a person, by way of substitution, passes to the next of kin, yet, an original gift, even of personality,

goes to the heir-at-law. (*De Beauvoir v. De Beauvoir*, 3 H. L. C. 524). And this is in accordance with the rule, that under a devise of gavelkind, or borough English lands, to the heirs of A., or to the testator's heirs male, the common-law heir, and not the customary heir, will take. (*Rob. Gavelk.* 156; *Thorp v. Owen*, 2 Sm. & Giff. 91).

In the case of *Heywood v. Heywood* (11 Jur., N. S., part 1, p. 633), the question arose upon a marriage settlement by a lady, of lands which she inherited through her mother, as heiress of Serjeant Heywood. The lands were conveyed by the heiress to trustees upon trust for the settlor, her heirs and assigns, until the marriage, and then upon trust for her for life, and after her death for her children; and in default of children, in trust for her, her heirs, and assigns, in case she should survive her husband; but if she should die in his lifetime, then from and after her decease and failure of issue, upon such trusts as she should appoint; and in default of appointment, in trust for the person who, on her decease, would have become entitled to the estate in case she had died intestate, and without having been married. The marriage took effect, and the settlor died in her husband's lifetime without issue, and without having appointed. It was contended by her heir *ex parte paternâ*, that if the limitation in question had not been inserted, and the settlor had died after having executed the settlement, but without having been married, he would have taken by descent, the settlement having broken the course of descent; and that the limitation, being merely an expression of intestacy, must have the same operation. But the Master of the Rolls held that the heir *ex parte maternâ* was intended, and was entitled; reading the limitation as if it had been thus expressed:—"To the person who would have been entitled to the estate in case she had died intestate, and without having married, and without having executed this settlement."

We conceive that in this the Court went beyond the limits of construction. All that was expressed, and, doubtless, all that was intended, was to limit the estate to the heirs, to the exclusion of the husband—the exclusion of the husband being the main object. What probably was not intended, because not thought of, and if intended, was certainly not expressed or suggested, was to correct or cure the operation of the settlement as a conveyance breaking the descent. The intention was wholly irrespective of any interruption of the course of descent, which, indeed, might have been previously effected by a mortgage and reconveyance.

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## THE JURIST.

LONDON, AUGUST 26, 1865.

Is a post-dated cheque valid? Lawyers might well be expected to be able to answer this question. It is short and simple enough; and though it may be difficult, on account of the number of statutable enactments on the subject, the only difficulty that we are aware of arises from their not being rightly apprehended. When they are so, there is really no room for doubt at all; and though it is true that there are contradictory decisions, it will be found that the decisions one way have proceeded upon an entire unacquaintance with the main enactments on the question. Every one knows, that before the late Stamp Acts imposing a stamp duty upon cheques, a post-dated cheque was invalid. (*Field v. Wood*, 7 Ad. & El. 120). So that the question is—there being no new enactment expressly directed to the point—whether the imposition of a uniform stamp duty of a penny upon cheques has worked any difference in the law in this respect, and has made post-dated cheques valid? One would suppose, *a priori*, that it would *not* be so, for as the duty on cheques is a uniform minimum duty of a penny, and the duty upon bills is graduated by a sliding scale ascending with the amount, and the period after date at which the bill is payable, the reasons against the validity of post-dated cheques are as strong as they ever were—indeed rather stronger; so that if the law has been altered in that respect, it cannot have been intended; and, on the contrary, each successive Stamp Act since the earliest has not only never repealed, but carefully and expressly reserved all former penalties, forfeitures, prohibitions, or penal provisions, changing only the duties. Now, what were those provisions? The earliest statute on the subject—which has been lost sight of in the latest decisions, creating a doubt on the point—was the 31 Geo. 3, c. 25, which first imposed stamp duties upon bills of exchange, and provides that no bill, note, or other draft or order, liable to the duties imposed by the act, should be given in evidence, or admitted to be good, useful, or available, unless duly stamped; and the scale of duties was adjusted to the amount of the bill, draft, or order, and the period after date at which it was payable. The terms of the act being, it is to be observed, not only bill and note, but “draft or order,” the legal description of a banker’s cheque clearly was large enough to include such cheques; and therefore it implied that such a cheque, though not on the face of it liable to duty—there being then no duty on a cheque as such—might nevertheless be liable to a duty; and how could it be so, except upon the ground that it was post-dated, and therefore, though on the face of it payable on presentation, it was really not payable until some period after date. And accordingly, on *this statute*, before any clause expressly imposing a penalty on post-dated cheques, it was held that a post-dated cheque was void (*Allen v. Reeves*, 1 East, 435; *Whitwell v. Bennett*, 3 Bro. & P. 559), because it was not within the exception in that statute—

i. e. because *not* being so, it came within the general enactments imposing duties on bills, notes, drafts, or orders payable after date. The 55 Geo. 3, c. 184, in no degree altered the law in that respect, but continued everything in the previous act save the scale of duties, and contained a new enactment to meet the case of a bill or draft *made payable after date*, but bearing date subsequently to the day on which it is issued, and imposing a penalty upon the maker, upon the obvious ground that the duty was evaded; because, as the period at which a bill made payable expressly at a period after the date on the face of it cannot be held to be payable at any other or longer time, the duty payable would necessarily be calculated only by the date on the face of it; and thus the duty would be evaded, and therefore the penalty was imposed. (*Williams v. Jarrett*, 5 B. & Ad. 32). But the case of a banker’s cheque post-dated was quite different; for there it became payable after date, not by virtue of its being expressly made payable by *reference* to a date on the face of it, but, on the contrary, it would be payable on the face of it, immediately on demand, *not* at any period after date, for on the face of it it would be payable at once; although, as bearing a certain date, not yet arrived, it would really be payable a certain time after *issued*. To such a case, therefore, the *duty* would apply, for it would be a bill, draft, or order, payable on demand, and, consequently, the 55 Geo. 3, c. 184, contained an *exception* of bankers’ cheques, *if* dated on the day on which they were really issued, which implied, that if *not* so dated they would be liable to duty, and for the same reason they would not be under the penalty clause. It applied only to cases where the bill was expressly payable *after date*, and where the duty would be evaded; and, on the other hand, the 55 Geo. 3 expressly retaining all the previous powers, the post-dated cheque would be void, not by reason of the penalty clause, but by reason of the provision in the 31 Geo. 3, that all drafts which had not the proper duty should be inadmissible and unavailable. Consequently, it was held that a post-dated cheque was inadmissible and unavailable (*Field v. Wood*, 7 Ad. & El. 120), that is, upon the ground that a post-dated cheque was really liable to duty as a bill. Then, the 16 & 17 Vict. c. 59, and the 17 & 18 Vict. c. 83, for the first time, imposes a uniform duty of 1*d.* on any draft or order for the payment of any sum of money to the bearer, or to order, on demand, and on drafts or orders payable *otherwise*, then a graduated scale—that is, *really* payable on demand, or otherwise than on demand; for a banker’s cheque is not *expressly* payable on demand. Neither on the other hand is it expressly made payable at any period after date. It is an *instant* authority or order operating *at its date*, that is, when the date on the face of it arrives. It cannot be, it is conceived, an authority to the bankers to pay *before* then. It is notorious that cheques are instantly drawn upon *anticipated* assets; and if presented *before* the date, the banker would not pay. On the other hand, if the answer then was, no assets, or no sufficient assets, an action would not lie for its dishonour unless presented again at the date, and then, if there were assets the banker would

be bound to pay. At all events, it is conceived, these are the considerations with reference to which the question should be decided; is or is not the cheque *really* payable on demand, i. e. on demand, at and immediately upon the time of making and issuing, or is it *really* payable otherwise than on demand, i. e. at a future time? The words are not, it is to be observed, "*made payable*," i. e. on the face of it, but "*payable*," i. e. *really* payable. But again, if the cheque is payable at and after the time of its *date*, then on the face of it it is *not* payable (i. e. when issued) upon demand, but otherwise; that is, not an instant demand, but a demand at a future time. So that even if the principle of *Williams v. Jarrett* applied, it would go to shew that a post-dated cheque was invalid; for with reference to the date on the *face* of it, it is not, *when issued*, payable immediately on demand. Therefore, it was that two judges successively (Hill, J., in *Dunford v. Curlewis*, 1 Fost. & F. 732, and Keating, J., in 2 Fost. & F. 127) held that a post-dated cheque was still void or invalid. And when Byles, J., stated the law thus, in his work on Bills, "It should seem that a cheque may now be post-dated; but the point is doubtful, for a cheque post-dated is *not really payable on demand*," though his attention was not directed to the earliest statute on the subject (and this alone gave rise to his doubt), he *hit the right point*. And it is to be observed, that assuming this to be so, that a cheque post-dated is not *really* payable on demand, then it is clearly liable to ad valorem duty, and if so, then the old statute, the general provisions of which are *expressly* preserved, renders it inadmissible and unavailable. Bramwell, B., in a case (*Key v. Mathias*, 3 Fost. & F. 281) where the earlier statute was not referred to, and the two previous cases were not cited, felt great doubt; and he again, with his instinctive shrewdness, hit the right point when he suggested, that there was a distinction between being liable to *duty* and liable to *penalty*: and it was not without great hesitation and doubt that—his attention not being drawn to the earlier statute—he held the cheque valid. So, in the case of *Whistler v. Forster* (14 C. B., N. S., 248), the old statute was not so much as mentioned; and the real question was not at all touched. Thus Willes, J., cited *Williams v. Jarrett*, and the whole Court expressly relied upon it, though, as already pointed out, it proceeded upon the terms of the *penalty* clause in the *later act*, 55 Geo. 3, and upon the ground that duty was *not* payable; whereas, as Byles, J. (who was not present at the decision), had pointed out in his book, the question is, whether a post-dated cheque is *really* payable on demand at the time it is made. And when Willes, J., observed, "*Williams v. Jarrett* decided that the Court can only look to the time expressed on the face of the bill," he overlooked this—that the decision was entirely upon an enactment pointed expressly and exclusively *at that*. And when he added—"This, no doubt, must have been the ground of my Brother Bramwell's ruling in *Key v. Mathias*," he overlooked that, on the contrary, he avowed that his mind was pressed by the point put by Byles, J., in his work, and which is the point insisted upon in the present argument, that a cheque post-dated is *not really* payable

on demand, nor does it purport to be so; but, on the contrary, it purports to be payable on demand at the *date on the face of it*; and, therefore, even taking the principle laid down by Willes, J., it is upon that very ground *not* payable on demand at the *time it is issued*; which, of course, is the governing point on all stamp questions. It is clear from the observations of Bramwell, B., as reported, that his mind was wavering on the very point here presented, viz. that the cheque might be liable to duty, though not liable to penalty. But, then, on the other hand, he was not aware of the earlier enactment, expressly preserved and retained in the most recent one—that a cheque not paying the duty to which it is liable, was, long before any penalty clause, invalid. His mind was exclusively directed to the penalty clause of the 55 Geo. 3; and, moreover, he was under the idea that it was repealed. His hesitating decision, therefore, is no authority for the point overruled, and his observations are authorities against it. And the Court of Common Pleas in like manner had not their minds at all directed to the earliest statute, which governs all the rest, and which makes a bill or cheque invalid if it does not bear the proper duty according to the time at which it is *really* payable, and were entirely directed to the *later act*, which only imposes a penalty precisely in cases in which the former act does *not* apply; that is, in cases where the duty is *not* payable. In the later case of *Austin v. Bunyard* (4 Fost. & F. 254), Cockburn, C. J., after some consideration, followed the decision of Hill, J., and Keating, J., and held the cheque invalid. And although he reserved the point, and the full Court reversed the ruling, it was only on the supposed authority of *Whistler v. Forster*, and with a distinct avowal, that the ground upon which it proceeded was not very intelligible. It is true, that the decision in the Common Pleas was upon a cheque payable to order. But the Court of Queen's Bench expressly intimated that they could not see how this made any distinction; nor can we discover any. The words of the 16 & 17 Vict. c. 59, imposing the duty are, draft or note *payable* (to bearer or order) *on demand*. The point is, whether the cheque (payable to bearer or order) is or is not *really* "*payable on demand*."—Per Byles, J. In all the cases in which that point has been met, and the earlier enactment borne in mind, the post-dated cheque has been held invalid. In all the cases in which it has been held valid, those two matters have been quite lost sight of. Therefore, we say that when they are kept in mind the point is clear; and the only doubt has arisen upon unacquaintance with the one and want of attention to the other. And we hold a post-dated cheque to be invalid. This is the opinion, we observe, of the learned reporter of *Austin v. Bunyard*; and in a long and elaborate note citing all the enactments and cases on the point, he arrives at the conclusion, that Hill, J., and Cockburn, C. J., were right; that Byles, J., and Bramwell, B., were warranted in their doubts; and that the case of *Whistler v. Forster* (decided only by three judges) cannot be relied upon.

## AGREEMENTS FOR REFERENCE WITHIN THE COMMON-LAW PROCEDURE ACT, 1854.

THE 17th section of the Common-law Procedure Act, 1854, enacts, that "Every agreement or submission to arbitration by consent, whether by deed or [by] instrument in writing not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court;" and it further provides, that "When in any case the document authorising the reference is, or has been, made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award."

In *Ex parte Glaysher, re Maitland and Glaysher* (3 Hurlst. & C. 442), a lease of a farm contained a provision for certain allowances to be made to the lessee on the termination of the tenancy, according to a valuation; "such valuation to be made by two indifferent persons to be chosen for that purpose; one by the said F. Maitland, his heirs and assigns, and the other by the said J. Glaysher, his executors and administrators; and in case of their disagreement in the amount thereof, then by a third person to be chosen by the two former previous to their entering upon such valuation, whose decision shall be final and conclusive." The tenancy having determined, the lessor and lessee respectively appointed valuers to make the valuation according to the provisions in the lease; and the valuers appointed an umpire, who made his award; but the referees were appointed by word of mouth only. Upon these facts, the Court of Exchequer was asked to make the submission to arbitration a rule of court under the 17th section of the Common-law Procedure Act, 1854. The Court objected that the submission was by parol, and, therefore, not within the enactment; and, after taking time to consider, refused to grant the rule. Pollock, C. B., said, "There is an obvious distinction between an agreement to refer, to an arbitrator to be appointed, any matter of difference which may thereafter arise, and an agreement to refer, to an arbitrator named, a matter which has already become the subject of dispute. If there be a general agreement to refer future disputes to one or more persons to be appointed, and in pursuance of that disputes are referred, the submission is by parol, although the agreement is by deed, and a parol submission cannot be made a rule of court. There will, therefore, be no rule."

During the argument his Lordship thus stated his view of the case:—"When the dispute arose, the parties by parol submitted the matter to two arbitrators, and the arbitrators by parol appointed an umpire, who made an award. A parol submission cannot be made a rule of court."

This decision involves important consequences, which do not appear to have been foreseen, extending beyond the subject of references to arbitration. The principle on which the decision proceeded seems to be, that an agreement is not an agreement in writing, if any part of the transaction to take effect under it is left to be ascertained by word of mouth. A contract in writing, for instance, to sell such part of a given estate as the purchaser shall select, at an acreage price, is not a contract in writing, within the Statute of Frauds, if the selection is declared by parol. An agreement to refer a given question to arbitrators to be appointed, is not an agreement for reference in writing, unless the referees are also appointed by writing; and an

agreement to refer all questions to arise between the parties in relation to a given matter is not an agreement for reference in writing, unless the questions are also agreed upon in writing. If that be so, few agreements for reference are within the act.

An agreement in writing to refer all questions at present existing between the parties to the arbitration of A. and B. would, it is presumed, be held by the Court of Exchequer to be within the act; yet the questions referred would be ascertained by parol—by the statements of the parties and their witnesses. But if the reference were to A. and B., or their umpire to be appointed by them, and the umpire were appointed by parol, the reference to A. and B. could be made a rule of court, but the reference to the umpire would, according to *Ex parte Glaysher*, be a reference by parol, and could not be made a rule of court. So of a reference to arbitrators to be appointed by the president of the Institution of Civil Engineers; for it cannot make any difference, in a question of parol or writing, whether the appointment is to be made by the persons interested or by a stranger, if only the authority is so framed as to need no further agreement between the parties. It is submitted, that in every case where the parties by their written agreement bind themselves to refer questions to arbitration, in such terms that either party can, against the will of the other, procure the appointment of a referee—competent within the terms of the agreement, and lay before him a question or dispute within the terms of the agreement, that is a written submission to arbitration, within the intent and meaning of the statute and all other intents and purposes, whether the differences contemplated are existing or future, and whether the referees be named or not. The context of the act seems to shew this conclusively. It will be observed that the last provision of the 17th clause speaks of the agreement contemplated by that clause as "the document authorising the reference." Now, the 11th section of the act makes certain provisions in case the parties to any deed or instrument in writing shall agree that "any then existing or future differences between them" shall be referred to arbitration; and the next section commences in these terms:—"If in any case of arbitration the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after the differences have arisen, concur in the appointment of an arbitrator, or if any appointed arbitrator refuses to act" &c., a judge may appoint an arbitrator. If, in the 12th section, a written agreement providing for the reference of future differences to arbitrators to be thereafter named, is spoken of as a document authorising the reference, can it be doubted that "the document authorising the reference," which is spoken of in the 17th section, may also be such agreement?

THE PRACTICE OF CONVEYANCERS.—When all is done, beware of the babe that was never weaned; the builder of Babel that brought about the confusion of tongues; beware of the conveyancer by the way side; the guardian of the golden fruit of all England, that only parts with one hissing head to receive back two; the rebellious sexton, who is the only one who knows where to find a place for a new corpse, and bullies his vicar accordingly; the conjuror who fills his mouth with nothing, and draws out endless shreds of paper; who can split gossamer, and spang a whale; who can sail in a sieve, and direct storms; at once Pallas and Neptune; a colossus, with one foot on the Athenæum and the other on the United Service; one moment twisting a few sharp and fiery cases, "three rays writhely riven," to form a "clapping thunderbolt" to launch at

some unfortunate obdurate Teucer of a vendor, for whom he is not concerned,

"Atque expirantem transfixo pectore flammæ,  
Turbine corripuit, scopuloque infixit acuto."

The next,

"Placidum caput extulit undis,"

all care and entreaty for the pious Æneas of a purchaser for whom he is concerned.

"Et dicto citius tumida sequora placat,  
Collectosque fugat nubes, solemque reducit."

Now, there are ordinarily a good lot of first-rate conveyancers, who are considered, sometimes, by others, as equal to unplaced judges; all knowing too much to be either timid or modest, and each with some particular theory or other, that obtrudes stiffly and painfully against the grain, like what is called a feather in the hair, and in all other respects dreadfully alike; smooth, silent, watchful, ever darting out upon you from bye-places, though it be but to throw a somersault and go back again, and always scudding a little one way, before finally running off another; and very alarming even when defeated, which they never can be, being in the commissariat, and non-combatants. The fact is, the conveyancer, intensely laborious, and

dwelling in perpetual solitude with his books, becomes subject to dreams and visions, which take form and colour from his waking occupations, and thus become what are called crotchets, being akin to fixed ideas; and these he stamps violently on his pupils and clients, and his pupils on the waiters at the Cook, and his clients on the Profession, and all of them together on the public; and thus they come to form what is known as the "Practice of Conveyancers." But every now and then, one or other of these crotchets will get knocked over by an idle word from the Bench. How or why this is done, the producer knows not, but done it is, and he deeply resents it, for it is not only an affront, but an innovation; but as he cannot resist, and will not repent, the only effect of all this is to make him cling more closely to those the barbarian eye has still left him, and train them as well as he can in the way they should not go, and dream for more; and thus it has come to pass, that the "Practice of Conveyancers" never is, and never can be, either the better or the worse for anything that befalls, but all conveyancers hate a meddling act of Parliament as they do the devil out of his persuasive attributes.—*Thoughts on Legal Discontent.* 1855.

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RETURN of the Number of Trust Deeds registered under the Provisions of the Bankruptcy Act, 1861, shewing the Number of Deeds registered in each Year, commencing on the 11th October, 1861, to the 10th October, 1864, inclusive, and for the Six Months ending the 10th April, 1865; distinguishing in each Year the Number of Deeds registered under Composition, the Amount of the Debts, and the Amount of Composition engaged to be paid upon said Debts, and the Number of Deeds registered under Inspection and Assignment, and shewing the Amount of Unsecured Debts stated in those Deeds.

*Number of Deeds registered from 11th October, 1861, to 10th April, 1865, inclusive.*

Date.	Deeds of Assignment.		Composition Deeds.		Deeds of Inspectorship.	
	Number.	Gross Amount of Unsecured Debts.	Number.	Gross Amount of Unsecured Debts.	Number.	Gross Amount of Unsecured Debts.
From 11th October, 1861, to 10th October, 1862	1886	£ 1,013,044 9 4	698	£ 373,138 7 5	46	£ 190,427 9 9
From 11th October, 1862, to 10th October, 1863	2344	4,040,930 12 6	662	926,048 2 2	15	50,883 15 7
From 11th October, 1863, to 10th October, 1864	2284	5,725,592 5 5	1278	2,497,805 2 3	39	620,522 16 0
From 11th October, 1864, to 10th April, 1865	1530	6,796,528 3 11	1210	4,436,901 1 3	85	5,306,185 4 6
Total . . .	8044	17,506,095 11 2	3848	8,233,892 13 1	185	6,167,969 5 10

### S U M M A R Y.

	Number of Deeds.	Amount of Debts.
		£ s. d.
Year ending 10th October, 1862 . . .	2630	1,576,610 6 6
Ditto . ditto 1863 . . .	3021	5,017,862 10 3
Ditto . ditto 1864 . . .	3601	8,843,920 3 8
Half-year ending 10th April, 1865 . . .	2825	16,469,564 9 8
Total . . .	12,077	31,907,957 10 1

Number of Composition Deeds and Rates of Composition.

Year ending 10th October, 1862.		Year ending 10th October, 1863.		Year ending 10th October, 1864.		Half-Year ending 10th April, 1865.	
Number of Deeds.	Rate per Pound.	Number of Deeds.	Rate per Pound.	Number of Deeds.	Rate per Pound.	Number of Deeds.	Rate per Pound.
	s. d.		s. d.		s. d.		s. d.
1	0 6	2	0 3	1	0 0½	13	0 6
24	1 0	1	0 6	1	0 3	1	0 8
1	1 3	22	1 0	1	0 4	1	0 9
4	1 6	2	1 4	9	0 6	79	1 0
1	1 7	7	1 6	1	0 8½	1	1 2
30	2 0	1	1 8	1	0 9	2	1 3
58	2 6	1	1 10	65	1 0	20	1 6
38	3 0	39	2 0	9	1 3	2	1 9
3	3 4	2	2 4	23	1 6	87	2 0
8	3 6	65	2 6	1	1 8	140	2 6
35	4 0	3	2 8	1	1 9	1	2 8
1	4 4	16	3 0	1	1 11	1	2 9
5	4 6	3	3 4	73	2 0	49	3 0
160	5 0	10	3 6	1	2 2	18	3 4
1	5 6	1	3 8	1	2 3	14	3 6
32	6 0	1	3 9½	1	2 4	2	3 8
1	6 2	46	4 0	152	2 6	67	4 0
6	6 6	2	4 6	2	2 8	1	4 2
20	6 8	179	5 0	1	2 10	1	4 3
9	7 0	4	5 6	1	2 10½	8	4 6
39	7 6	26	6 0	1	2 11	230	5 0
17	8 0	3	6 6	50	3 0	1	5 3
5	8 6	33	6 8	1	3 3	4	5 6
8	9 0	8	7 0	17	3 4	1	5 8
95	10 0	1	7 3	15	3 6	35	6 0
5	10 6	34	7 6	91	4 0	2	6 2
4	11 0	11	8 0	1	4 2	1	6 3
2	11 6	4	8 6	1	4 3	2	6 6
12	12 0	9	9 0	10	4 6	27	6 8
18	12 6	63	10 0	314	5 0	11	7 0
3	13 0	1	10 6	5	5 6	49	7 6
1	13 4	5	11 0	50	6 0	37	8 0
1	13 6	1	11 6	1	6 4	5	8 6
5	14 0	7	12 0	4	6 6	20	9 0
1	14 6	10	12 6	46	6 8	1	9 3
16	15 0	4	13 0	16	7 0	1	9 6
2	16 0	1	13 6	51	7 6	125	10 0
1	17 6	1	14 0	35	8 0	5	10 6
21	20 0	10	15 0	1	8 3	13	11 0
		1	19 11	7	8 6	1	11 3
		2	20 0	16	9 0	2	11 6
				3	9 6	13	12 0
				119	10 0	18	12 6
				3	10 6	4	13 0
				5	11 0	3	13 4
				8	12 0	4	13 6
				7	12 6	5	14 0
				1	13 3	2	14 6
				2	13 4	19	15 0
				1	13 6	2	16 0
				3	14 0	1	17 0
				15	15 0	1	17 6
				1	18 0	1	19 11
				37	20 0	51	20 0
608		662		1278		1210	
						1278	
						662	
						608	
				Total . . .		3848	

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# THE JURIST.

LONDON, SEPTEMBER 2, 1865.

A VERY important and salutary statute has been passed this session (c. 63) respecting the validity of laws which may have been, or hereafter shall be, enacted in our "colonies;" meaning by that term all her Majesty's possessions abroad which have a legislature, except only the Channel Islands, the Isle of Man, and the Indian Empire; and we propose to draw attention to its provisions, inasmuch as, though printed among our issue of the statutes, a statute is sometimes overlooked amongst the number printed together; and, further, is sometimes not very easy reading for the laity, in consequence of its perpetually having reference to the interpretation clause.

The provisions, popularly and succinctly expressed, are as follows:—

In any colony which has a legislature (representative or not) competent to make laws, any law already or hereafter made by such legislature, or her Majesty in Council, which is repugnant to any act of Parliament applicable, by express words or necessary intendment, to such colony; or repugnant to any order or regulation made under such act of Parliament, or having the force of such act, shall be read subject to such act, order or regulation, and shall be void only to the extent of such repugnancy; and no such colonial act shall be void because it is repugnant to the law of England, unless it is also repugnant to such act of Parliament, order, or regulation.

In any colony which has a legislature (representative or not) competent to make laws, any law already or hereafter passed, with the consent or concurrence of the governor, shall not be void by reason of any instructions from the Crown with respect to such law, or the subject thereof, given by any instrument except his letters-patent, even though the letters-patent may refer to them.

In every colony which has a legislature (representative or not) competent to make laws, such legislature shall have full power within its jurisdiction to establish courts of judicature, to abolish them, reconstitute them, alter the constitution of such courts, and provide for the administration of justice therein; and if such colonial legislature comprises a legislative body of which one-half is elected by the colonists, it shall have full power to pass laws as to the constitution, powers, and procedure of the legislature, as long as the laws are passed in conformity with the acts of Parliament (by express words or necessary intendment), the letters-patent, the Orders in Council, and the laws of the colonial legislature for the time in force in the colony.

This section is very clumsy, and may lead to considerable controversy, for the proviso, if construed strictly, seems to cripple such representative colonial legislature from passing a law repugnant to one which they have already passed, which could never have been the intention of the section, as such power of reconstruction is of the very essence of a legislature,

while, on the other hand, if the liberal and contrary construction be the true one, then it may be argued that it also follows, that in the case of a representative legislature, the imperial acts of Parliament may equally be abrogated, and that acts 2 and 3 in such cases do not apply. Whatever may have been the intention of this act, which has been passed for the settling of doubts respecting the legislative powers of our colonies, it has, by that fatal clumsiness which seems always to attend our colonial legislation, contained within itself as grave a matter of doubt as any of the doubts which it professes to cure. We hope that our Government will immediately draw up a new statute, free from this germ of contention, and pass it at the beginning of next session, in the place of this present act.

The statute then provides, that a certificate of the proper officer of the legislature, that an attached document is a true copy of a colonial law, &c., shall be *prima facie* evidence of the proper passing of such law, and the assent of or presentation to the governor, as the case may be; and also, that a proclamation in a colonial newspaper, purporting to be by the governor, shall be *prima facie* evidence of the disallowance or assent to the law.

And the act concludes with the following provision, which applies only to South Australia, viz. that all laws purporting to have been passed by persons acting as its legislature, and having been assented to by the Queen in Council or the governor, shall be valid; but nothing in the section is to give effect to any such law, which has been disallowed, or has expired or been repealed; nor to prevent the disallowance or repeal of any law.

In two articles published on the 25th June and the 30th July, 1859, we elaborately discussed all the cases there decided with respect to an owner's liability for injuries done by an animal belonging to him, and shewed how such cases substantiated and illustrated the well-known propositions of law; that the owner's liability depends on his knowledge of the propensity of his animal; that in case of animals *feræ naturæ*, the nature of the animal is of itself sufficient notice to him; that in case of animals ordinarily domesticated, it is necessary to shew that the owner knew on some previous occasion that his animal had disclosed his dangerous propensities; and that there is this distinction between an injury done by an animal at large and one confined on the owner's premises, as, for instance, a yard-dog; that, in the latter case, the owner's liability stands on the same footing as his liability for injury occasioned by any dangerous machine on his premises, so that he would not be liable unless he placed it where persons, either by express invitation or implied license, would come, and would not be liable for damage done to a mere trespasser. This latter proposition being, however, an exposition of the common law on the point, and of course subject to the qualification introduced by particular well-known statutory provisions respecting certain dangerous instruments, as spring guns, &c.

The law, then, having been firmly fixed, that a man was not liable for the injuries done by his dog, unless a scienter was alleged and proved, and having been so stated in the above-mentioned articles, we wish to draw attention to a statute which has been passed this session, materially altering the law on this point. This statute is cap. 60 of last session.

Cap. 60 applies to England and Wales, and enacts, that the owner of a dog shall be liable in damages for injury done to cattle and sheep by his dog, without its being shewn that the dog had a previous mischievous propensity, or that the owner was aware of it, or the injury attributable to his neglect; and that where such damage is under 5*l.*, it shall be recoverable in a summary way before a justice of the peace; and the occupier of the premises where the dog is kept, or permitted to live and remain at the time of the injury, is to be deemed to be the owner, unless he shew that he was not owner, and that the dog was on the premises without his sanction or knowledge; and where premises have more than one occupier, and are let in separate lodgings, &c., the occupier of the particular part where the dog is permitted to live is alone to be esteemed such owner. And as we have alluded in passing to the provisions, of certain criminal statutes, against the setting of spring guns, &c., we may also, before concluding, draw attention to the statutes passed long since the above-mentioned articles, and analogous in spirit, viz. the 26 & 27 Vict. c. 113, and the 27 & 28 Vict. c. 115; the former prohibiting the sowing or placing of poisoned grain in or upon any ground or exposed place; the latter prohibiting the placing of poisoned flesh on any land, except an inclosed garden attached to a dwelling-house, or in a drain protected against dogs, or in a stack, &c., in order to kill vermin.

## JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(From the Blue Book).

FOR all the courts of civil jurisdiction, the proceedings of which have been included in the judicial statistics of preceding years, similar information is given for 1864, in the second part of the present volume.

The tables are arranged in the same order as heretofore, and are preceded by the usual summaries and comparisons in the preliminary report, the numbers for 1863, and in almost every case the average of the numbers for the five years 1859 to 1863, inclusive, being shewn in comparison with the numbers for 1864.

In the preliminary part is given also (p. ix, after the statement of the Suitors' Fund) a further statement of fees, in respect of the common-law courts, and of the office of the Queen's Remembrancer.

An additional statement furnished by the Accountant-General of the Court of Chancery, also, is inserted after the return of the Suitors' Fund and Suitors' Fee Fund of that court.

And with regard to the High Court of Admiralty, an explanation is given, as made by the registrar, of the reasons for which it is not possible for him to furnish a return of the Fee Fund of the court, similar to that made from the annual account presented to Parliament by the Accountant-General, under the act of the 5 Vict. c. 5, of the Suitors' Fund and the Suitors' Fee Fund of the Court of Chancery.

Returns are given in the tables in the usual form, as furnished by the different officers, shewing the proceedings in the three superior courts of common law, in the same detail for 1864 as for preceding years. The return of certain proceedings under the peculiar jurisdiction of the Court of Queen's Bench on the Crown side, made by the Queen's Coroner and Attorney, and Master of the Crown Office, forms the first table. These officers have added to their return the same explanation as given by them in previous years, to the effect that the casting of the several columns will not give an adequate notion of the total proceedings, inasmuch as the same matters appear more than once in the same column. They state that the real account of total proceedings for 1864 is given below. The corresponding numbers for 1863, are shewn for comparison, with the average of the numbers for the five years from 1859 to 1863, inclusive.

	1864.	1863.	Average 1859-63.	
On writs of mandamus—made absolute	17	.. 13	..	20
On quo warranto—Informations filed	1	.. 4	..	5
On writs of habeas corpus—Applications for writs	34	.. 18	..	30
On writs of certiorari—Writs issued	87	.. 95	..	83
Judgments and executions	6	.. 10	..	18
On grand jury bills	13	.. —	..	—
On informations ex officio	—	.. —	..	2
On orders of sessions—Removed into Queen's Bench	13	.. 27	..	27
On special cases from quarter sessions (12 & 13 Vict. c. 45)	18	.. 7	..	11
On special cases on proceedings before justices (20 & 21 Vict. c. 43)	48	.. 31	..	47

The nature of the offences tried on the Crown side of the Court of Queen's Bench is, as stated by the officers of the court, conspiracies, perjuries, assaults, nuisances, and other misdemeanours, and occasionally, but rarely, felonies. It is further explained, that, as the trials take place at Nisi Prius in London and Middlesex, and at the assizes for the other counties, there is not any record kept in the Crown Office of the number of causes or of the number of persons tried, or of the judgments, except in cases in which judgment is entered up in the Queen's Bench, and except where parties are fined. No record is kept in the Crown Office of persons sentenced to be imprisoned, except where the sentences are passed by the court in banc, which very seldom occurs now, as sentences are, by virtue of stat. 11 Geo. 4 & 1 Will. 4, c. 70, almost invariably passed by the judge at Nisi Prius, and not afterwards entered up of record in the Queen's Bench.

In 1864, sentence of "fined" appears to have been recorded in three cases, viz. the Midland Railway Company, 30*l.*; John Jones, 50*l.*; and Robert Highat, 50*l.*

The total amount of fees received in the Crown Office in 1864 was 578*l.* 9*s.* 9*d.* The amount was 607*l.* 8*s.* 4*d.* in 1863, and higher in each of the four preceding years. No fees are now allowed to be taken for duties performed for any of the Government departments.

The chief proceedings on the plea side in each of the three superior courts of common law, as shewn in the returns furnished by the Masters, the form of procedure being similar in the three courts, are stated in the following summary for 1864. The totals of the matters under each heading are added for 1863, and the average of the totals of the five years 1859 to 1863, inclusive.

Nature of the Proceedings.	1864.								1863.		Average of the Totals for 1859-63.	
	QUEEN'S BENCH.		COMMON PLEAS.		EXCHEQUER.		TOTAL.		TOTAL.			
	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.
Writs of summons issued . .	34,285	—	32,200	—	46,673	—	113,153	—	100,042	—	100,949	—
Writs of capias . . .	170	—	167	—	183	—	520	—	608	—	556	—
Appearances entered . . .	9,319	—	9,389	—	11,408	—	30,116	—	27,034	—	26,624	—
Judgments . . .	11,303	—	9,952	—	15,309	—	36,564	—	33,743	—	38,639	—
Executions . . .	7,759	—	7,994	—	10,721	—	25,474	—	23,752	—	25,729	—
Motions for new trials . . .	—	192	—	319	—	165	—	566	—	561	—	562
Other special motions . . .	—	252	—	272	—	181	—	765	—	846	—	781
Hand motions and on side bar rules . . .	1,135	—	1,030	—	1,211	—	3,376	—	3,180	—	3,405	—
Cases referred to Masters . .	227	—	221	—	316	—	664	—	426	—	631	—
Total amount of fees . . .	£34,311	6 0	£18,671	16 6	£26,824	2 0	£69,807	4 6	£64,537	11 6	£66,092	18 0

No statement is given in the returns for the Courts of Queen's Bench or Common Pleas of the number of bills of costs taxed in the year 1864. In the Court of Exchequer, the number, exclusive of bills taxed under the statute, was 7692, being an increase of 192, or 2·5 per cent. upon the number for the preceding year.

The number of causes entered for trial, the number of trials, and the number withdrawn, struck out &c., are shewn, with regard to the Courts at Westminster,

in the returns furnished by the associates of each of the three courts, and with regard to the proceedings at Nisi Prius in the returns made by the clerks of assize and clerks of the Crown.

In the following abstract, the numbers for 1864 are given for each of the three courts, with the totals. The totals under each head are added for 1863, and the average of the totals for the five years 1859 to 1863, inclusive.

Number of Causes.	1864.								1863.		Average of Totals for 1859-63.	
	Queen's Bench.		Common Pleas.		Exchequer.		Total.		Total.			
	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.
Entered for trial . . . .	839	484	838	303	824	635	2501	1322	2251	1268	2222	1243
Trials . . . .	—	355	—	220	—	377	—	952	—	959	—	942
Defended . . . .	303	—	346	—	316	—	965	—	939	—	970	—
Undefended . . . .	68	—	79	—	112	—	254	—	223	—	192	—
Withdrawn, struck out, &c. .	443	113	380	77	403	149	1126	339	1071	293	985	256

Besides the foregoing, there were forty cases entered for trial on circuit in the Common Pleas of Lancaster; two in the Common Pleas of Durham; and six issues from the Court of Probate, all of which were tried, except fourteen from the Common Pleas of Lancaster, which were withdrawn.

The nature of the suits tried at Westminster, and of all those entered for trial at Nisi Prius on circuit is shewn under the following classification in the returns furnished respectively by the associates, and by the clerks of assize and clerks of the Crown.

Nature of the Suits.	Total.		Queen's Bench.		Common Pleas.		Exchequer.		Court of Probate.	Common Pleas of Lancaster.		Common Pleas of Durham.
	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.
On promissory notes, bills of exchange, &c. . .	159	99	44	29	52	19	63	48	—	3	—	—
On bonds . . .	20	7	2	2	13	—	3	5	—	—	—	—
For goods sold and delivered . . .	168	141	37	40	48	27	83	69	—	5	—	—
For work and labour done . . .	132	100	42	34	36	23	54	39	—	4	—	—
For money paid, advanced, or lent . . .	46	56	13	20	17	17	16	19	—	—	—	—
For money received . . .	26	20	8	4	8	6	10	9	—	1	—	—
For compensation for personal injuries under Lord Campbell's Act . . .	94	78	27	31	34	15	33	28	—	4	—	—
For compensation for other injuries from negligence . . .	42	58	10	28	13	16	19	14	—	—	—	—
Replevin or distress . . .	17	5	10	1	3	2	4	2	—	—	—	—
Trover or detinue . . .	39	62	11	14	11	23	17	24	—	1	—	—
For breach of contract . . .	135	102	57	34	46	27	32	39	—	2	—	—
Upon special contracts . . .	54	73	—	25	54	16	—	31	—	1	—	—
For breach of warranty . . .	8	15	4	1	1	3	3	10	—	1	—	—
For infringement of patents . . .	7	8	1	2	4	3	2	3	—	—	—	—
Carried forward . . .	947	824	296	265	340	197	339	340	—	22	—	—

Nature of the Suits.	Total.		Queen's Bench.		Common Pleas.		Exchequer.		Court of Probate.	Common Pleas of Lancaster.	Common Pleas of Durham.
	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Westminster.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.
Brought forward	947	824	208	265	340	197	329	249	—	22	—
For recovery of land (ejectments)	54	163	23	33	19	23	12	40	—	6	1
Trespasses relative to land, houses, &c.	36	144	9	82	19	26	8	49	—	7	—
Questions on wills	—	6	—	—	—	—	—	—	6	—	—
For breach of promise of marriage	9	23	2	10	4	8	3	10	—	—	—
Seduction	4	14	2	3	1	2	1	6	—	1	—
Libel	21	16	6	6	8	7	7	8	—	—	—
Slander	26	48	9	21	11	6	6	17	—	2	—
Malicious prosecution	3	9	2	3	—	2	1	3	—	1	—
False imprisonment	24	28	9	6	8	6	7	14	—	—	—
Assault	19	33	—	7	9	6	10	19	—	—	1
Interpleader issues	8	15	5	12	3	—	1	3	—	—	—
On the case	—	—	—	—	—	—	—	—	—	—	—
Nuisance	2	13	2	8	—	—	—	5	—	—	—
Breach of covenant	17	23	7	6	—	6	10	11	—	—	—
For recovery of rent	18	6	9	3	3	3	6	1	—	—	—
On life and fire policies	8	3	5	—	—	2	3	1	—	—	—
Other suits	25	64	10	37	1	13	14	13	—	1	—
Total	1221	1370	306	484	425	303	428	535	6	40	2

The number of suits entered for trial at Nisi Prius on each circuit in 1864, and the number tried, were as follows:—

Circuit.	Entered for Trial.	Trial.
Home	290	208
Midland	239	175
Norfolk	78	60
Northern	28	25
Oxford	120	88
Western	84	78
Bristol	40	28
North Wales	62	54
South Wales	47	36
County palatine of Durham	23	17
County palatine of Lancaster	263	222

Total for trial, 1370; total tried, 986, or 71·9 per cent. of the number entered for trial. The remainder were withdrawn, referred, &c., as shewn in the table.

One case was not tried, "pro defectu juratorum." In 1863 the total number tried was 997; in 1862, 1059; in 1861, 1024; in 1860, 965.

The returns furnished by the Masters of the three superior courts, after stating the number of causes entered for trial, the number of writs of *capias*, and the number of appearances entered for each quarter of the year, next shew the number of judgments, under the different terms, as given in the following summary, in the causes tried at Westminster, and in those on circuit, without distinction. It rests with the parties for whom verdicts are given at Nisi Prius to make application for the return of the issues into the courts at Westminster, and in some cases a compromise is made after the verdict, and no further proceedings appear.

The following are the judgments as shewn in the returns for 1864, with the total numbers for each court in 1863, and the average of the totals for the five years 1859 to 1863, inclusive:—

	1864.				1863.	Average of Totals for 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
On judges' orders:						
For default of service	553	713	800	2,135	1,809	1,916
On affidavits of service	8,290	7,049	11,416	26,755	24,506	25,629
On demurrers:						
For plaintiff	7	4	16	27	33	29
For defendant	6	—	4	10	21	22
On postea, writ of trial, and writ of inquiry:						
For plaintiff	417	443	634	1,494	1,488	1,510
For defendant or nonsuit	99	112	143	354	475	450
By default for plaintiff	1,161	1,169	1,606	4,028	3,630	3,659
On non pros. for defendant	64	47	44	155	180	159
On special cases:						
For plaintiff	5	2	3	10	19	17
For defendant	2	3	3	8	11	15
On judges' orders to stay proceedings:						
Warrants of attorney, certificates of arbitrators, &c.	600	410	479	1,589	1,571	1,579
Total judgments	11,303	9,952	15,309	36,564	33,743	34,625



Comparing the totals, there is an increase in 1864 of 2821, or 8·3 per cent. above the number in 1863, and of 1939, or 5·6 per cent. above the average of five years. The increase extends to each of the three courts, amounting for the Queen's Bench, to 965, or 9·3 per cent.; for the Common Pleas, to 1017, or 11·3 per cent.; and for the Court of Exchequer, to 839, or 5·8 per cent.

The returns furnished by the associates shew the result of the causes tried in each of the courts at

Westminster, in each description of suit. The returns made by the clerks of assize, and the clerks of the crown for the counties palatine, shew the results in the causes tried on circuit, in the different descriptions of suits and account for the whole of the causes entered for trial on circuit. The following summary shews the results of the suits both at Westminster and on circuit for 1864, with the total number for 1863, and the average of the totals for 1859 to 1863, inclusive:—

	1864.					1863.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Nisi Prius.	Total.	Total.	
Verdict for plaintiff	242	319	306	698	1565	1445	1462
Verdict for plaintiff, subject to special case	9	5	5	19	38	31	36
Verdict by consent with reference	23	6	23	123	175	145	137
Verdict for defendant	49	59	49	118	275	303	342
Jury discharged without verdict	7	6	12	10	35	30	31
Jury withdrawn	15	17	12	41	86	78	80
Nonsuit	21	18	20	28	80	104	98
Set process, venue changed, record withdrawn, &c.	—	—	—	335	335	289	297
Total	366	426	426	1379	2589	2476	2394

The classified amounts and the total amount recovered, under each description of suit, are shewn in the returns made by the associates with regard to the causes tried at Westminster, and in those furnished by the clerks of assize and clerks of the crown with regard to the causes on circuit. The following sum-

mary shews the number of each class of amounts recovered in 1864, in each of the three superior courts, and at Nisi Prius. The total amount recovered exceeds by the sum of 103,118*l.*, or upwards of 39*l.* per cent., the amount shewn in the returns for the year 1863:—

Number of each Class of Amounts.	Total.	Queen's Bench.	Common Pleas.	Exchequer.	Nisi Prius.
Above 5000 <i>l.</i>	16	1	3	1	5
5000 <i>l.</i> and above 3000 <i>l.</i>	8	2	2	—	4
3000 <i>l.</i> and above 2000 <i>l.</i>	18	2	1	3	12
2000 <i>l.</i> and above 1000 <i>l.</i>	22	3	4	5	17
1000 <i>l.</i> and above 500 <i>l.</i>	63	5	17	6	35
500 <i>l.</i> and above 300 <i>l.</i>	67	15	19	6	34
300 <i>l.</i> and above 200 <i>l.</i>	82	7	21	15	39
200 <i>l.</i> and above 100 <i>l.</i>	162	20	27	34	83
100 <i>l.</i> and above 50 <i>l.</i>	217	44	41	42	90
50 <i>l.</i> and above 20 <i>l.</i>	440	79	101	114	152
20 <i>l.</i> and under	204	48	70	68	186
Total amount recovered	£268,182	£48,258	£70,246	£42,168	£207,510

The Masters' returns next shew the number of executions under the different forms of writs. The following were the numbers in each of the three courts

in 1864, with the totals for the three courts in 1863 and the average of the totals for the five years, 1859 to 1863, inclusive:—

	1864.				1863.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
Writs of fieri facias	5359	4674	7643	17,676	16,563	17,139
capias ad satisfaciendum	2173	2227	2842	7242	6557	7033
possession	151	119	145	415	436	479
elegit	54	65	61	170	145	115
exigi facias	18	16	23	57	34	51
capias ad ligatum	4	3	7	14	17	10
Total executions	7759	7094	10,721	25,574	23752	25,726

The judgments being subject to revision by the courts sitting in banco, on motions for new trials, or to enter or alter verdict, or for nonsuit, or arrest of judgment, or non obstante veredicto, the returns made

by the Masters shew that of such cases there were the following in 1864, the totals for the preceding year and the average of the five years being added for comparison:—

	1864.				1863.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
Refused	49	53	26	128	110	114
Rule nisi granted	75	88	57	220	221	241
Rule absolute granted on payment of costs	6	2	—	8	7	102
Rule absolute granted without costs	26	33	33	92	105	
Rule absolute granted with question of costs reserved	5	4	1	10	8	
Rule discharged	31	37	36	106	119	107
Where court divided	—	2	—	2	1	3

(To be continued).

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## THE JURIST.

LONDON, SEPTEMBER 2, 1865.

WE have in a previous number (Aug. 12) discussed the "Act to amend the Law of Partnership," passed during the last session, but the measure is so important, that we think some further remarks upon it will not be out of place. Two matters struck us, during the passage of the bill, as being rather curious; the one was, that there should have been such a general impression that the bill was introducing a great novelty—a something contrary to the accepted principles of English law; the other was, that it does not seem to have been pointed out; that in truth it was merely substantiating the reasoning on which the learned lords who gave judgment in the important case of *Cox v. Hickman* founded their decision. With respect to the first (as was pointed out by the late Lord Chancellor), according to the true principles of English law, the existence of a partnership should depend upon the conduct and intention of the parties; and where the parties have not entered into a contract of partnership, the law should not hold them partners, as respects their liability to third parties, except in the case of their holding themselves out as such, and thus bringing into play another distinct principle of law; and the curiously fine-drawn distinctions and elaborate decisions which have so long been a disgrace to this portion of our law, have all sprung out of a struggle against an old and erroneous decision, causing the law of partnership, as his Lordship possibly put it, to depend on subtle distinctions, and not on the wholesome and well-established principles of the law of England. With respect to the second, Lords Cranworth and Wensleydale, in delivering judgment in *Cox v. Hickman*, laid down, that the law of partnership was merely a branch of the law of principal and agent, and was to be governed by the same principles; so that an agreement to share profits was not a final criterion, but a test to be used, as other circumstances, for arriving at a conclusion in each case. And thus, as pointed out by Mr. Lindley in his learned book on the Law of Partnership, the principles on which the judgment was founded would seem to establish the following propositions:—First, that persons who share the profits of a business are, like other persons, only liable for the acts of themselves, and of their real or ostensible agents. Secondly, that, whether in any particular case, the relation of principal and agent does or does not exist between one person who carries on a business, and another person who shares its profits, depends not on the mere fact that the business is carried on, more or less, for the benefit of the latter, but on all the circumstances of the case. Thirdly, that the relation of principal and agent is not constituted merely by an agreement which entitles one person to share the gross returns of a business or adventure conducted by another. Fourthly, that the relation of principal and agent is not constituted merely by an agreement which entitles one person to be paid definite sums out of the profits made by another.

Fifthly, that the relation of principal and agent is not constituted merely by an agreement which entitles one person to be paid sums varying with the profits made by another. Sixthly, that the relation of principal and agent is not constituted merely by the existence of a trust entitling one person to profits made by another. Seventhly, that *prima facie* the relation of principal and agent is constituted by an agreement entitling one person to share the profits made by another to an indefinite extent.

Accepting, then, the late Lord Chancellor's statement of the true principles of our law, and Mr. Lindley's statement of the deductions and consequences arising from the reasoning in the judgments in *Cox v. Hickman* to be correct, let us see if there be anything in this new statute which is more than a statutory affirmation of them.

The 1st section enacts, that "The advance of money by way of loan to a person, engaged or about to engage in any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such."

The section we see carefully provides, that such a contract shall not of itself constitute a partnership, leaving it, however, as a circumstance to be taken into consideration with other surrounding circumstances in determining the liability as respects third parties, and it can only be considered as an extension of the principles deduced by Mr. Lindley from *Cox v. Hickman*, in so far as it may affect his seventh deduction, that a participation of profits to an indefinite extent will *prima facie*, and without any explanation afforded by other circumstances, constitute a partnership liability; but it would really seem hardly to do this, as, in order to come within such seventh deduction, an indefinite participation of profit is requisite; whereas sect. 1 evidently points to a definite participation, dependent in some definite way on a fixed sum, viz. the amount of the loan; and this appears to be clearly the case, on referring back to the previous proposition; while, on the other hand, the provision as to the contract being in writing materially restricts Mr. Smalley's proposition.

Sect. 2 enacts, that "No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner." This certainly cannot be considered as any extension of Mr. Smalley's propositions; and we here parenthetically remark, that the provision as to the contract being in writing is confined to sect. 1.

The same may be said of sect. 3, which enacts, "No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed

to be a partner of or to be subject to any liabilities incurred by such trader;" and of sect. 4, which enacts, "No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business." And, indeed, sects. 2, 3, and 4 are sections, the justice and policy of which can hardly be doubted, and to which no objection seems to have been offered; sect. 1 being the provision which has provoked discussion, and excited division of opinion. And now we come to sect. 5, which enacts, "In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than 20s. in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied." This section, it will be observed, applies to sect. 1, and is most eminently restrictive.

It thus, then, would appear that this statute, which many contended to be a dangerous innovation, is merely a proper carrying out of the true principles of our law, and the reasoning contained in the judgments of our highest legal tribunal, or, with some accuracy, perhaps, a statutory restriction thereon. It must not, however, be considered that it is therefore of little value, for the law lords were so careful in distinguishing former cases, and professing not to overrule them, and there was such a division among the judges, and such a disinclination to upset any old case, that we cannot but see that the reasoning of the law lords would have never been acted on, but the judgment in the particular case, and an application to it alone, would have alone been effectual. The statute in this view is most important and effective, and has put the law of partnership on its proper footing, and effectually nipped in the bud an enormous amount of expensive litigation which would inevitably have immediately arisen in the struggle to carry out the principles enunciated in *Cox v. Hickman*, which thus may be said to have been statutorily indorsed with definite applications. The practically trenchant effect of the statute we do not underrate, but we deny its novelty, and look on it merely as a return to proper principles, and a parliamentary enactment, whereby the principles of law enunciated in *Cox v. Hickman* are

made law instead of (as in every probability would have otherwise been the case) the mere decision on the particular case.

## JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Continued from p. 340).

It has been shewn that in 1864 the number of writs of summons issued, which represent the suits commenced, was 113,158, and the number of appearances entered 30,116, or 26·6 per cent. of the number of writs issued. It would, therefore, appear that 73·4 per cent. of the cases commenced were uncontested, the defendants at once settling the claims, except where judgment was obtained in default of the entry of an appearance. It appears remarkable in how slight a degree the proportion borne by the number of appearances entered to the number of writs of summons issued varies from year to year. In 1863 it was 27·0 per cent.; in 1862, 26·6 per cent., the same as in 1864; in 1861 it was 25·4; in 1860, 26·2 per cent.

Again: of the cases in which appearances were entered, 3823 only were entered for trial, the suits being thus reduced by 12·7 per cent. Of the number entered for trial, 2171, or less than 2 per cent. of the suits commenced, were tried; and of these, 11·7 per cent. were undefended.

As has been observed in former years, however, the issue of the suits commenced is not fully represented by the causes brought to trial, or by the appearances entered. The judgments obtained are a further test. Of these, as already shewn, there were, under the different forms of procedure, 36,564, leaving 76,594, or 67·7 per cent., as the number and proportion of the suits commenced in which no proceedings were taken beyond the issue of the writ of summons. In 1863 this proportion was 66·3 per cent. Of these cases, some may have been settled between the parties after the issue of the writ of summons; some may not have been pursued further by the plaintiff; and in either case they are lost from the record; some may have been left pending, the time which may elapse between the proceedings being uncertain.

For the enforcement of the judgments, writs were issued, as already shewn, in 25,574, or 69·9 per cent. of the cases. In the preceding year the proportion was 70·4 per cent. of the cases. In 1864, 69·1 per cent. of the writs were to levy upon the goods; 28·3 per cent. were against the person; 1·6 per cent. for possession after recovery in ejectment; the remainder under the different forms before shewn. In 1863 these proportions were, respectively, 67·9, 27·6, and 1·8 per cent.

Upon the large amount of procedure which has been shewn, the number of remanets under the different descriptions was as follows at the end of each term in 1864, as stated in the returns for the respective courts:—

	In the Quarters ending			
	31st March.	30th June.	30th Sept.	31st Dec.
Queen's Bench:				
By consent . . . . .	2	9	—	13
By injunction or decree . . . . .	17	31	—	38
For want of time to try . . . . .	51	169	—	41
Common Pleas:				
By consent . . . . .	40	31	3	67
By injunction or decree . . . . .	—	—	—	40
For want of time to try . . . . .	—	—	77	20
Exchequer:				
By consent . . . . .	5	9	2	16
By injunction or decree . . . . .	—	—	—	—
For want of time to try . . . . .	5	—	—	—

The returns furnished by the chamber clerks shew the business in the chambers of each of the judges of the three superior courts of common law. In the following summary, the totals of the proceedings in the chambers of the five judges of each court are given under the different headings for 1864, and the totals

under each heading, for all the chambers; with the totals for 1863, and the average of the totals for the five years, 1859-63. A comparison of the totals shews little variation from year to year in the number of the proceedings under each head, considering the large amount of business:—

Proceedings.	1864.				1863.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
Summonses . . . . .	15,425	11,118	14,580	41,123	43,372	43,546
Common orders . . . . .	13,091	8,381	12,557	34,029	36,331	36,109
Special orders . . . . .	5,052	2,799	3,522	11,373	12,161	11,994
Certificates, special cases, special verdicts, flats, &c. . . . .	905	546	457	1,908	1,794	1,937
Affidavits, affirmations, &c. . . . .	9,581	3,968	4,279	17,828	19,404	22,688
Affidavits filed . . . . .	8,811	2,967	5,279	17,057	18,158	18,106
Approbations for taking affidavits or special bail . . . . .	162	97	98	352	355	419
Acknowledgments by married women . . . . .	126	227	16	369	675	519
Office copies (number of folios) . . . . .	5,108	2,660	4,378	12,144	11,895	11,473
Recognisances . . . . .	4	—	16	20	49	57
Writs of error . . . . .	—	—	—	—	—	1
Bail . . . . .	13	7	22	42	67	62
Committals . . . . .	—	2	—	2	4	157
Exhibits before judge . . . . .	2,058	807	953	3,818	4,126	4,089
Producing judge's notes . . . . .	29	38	16	83	114	119
Bills of exceptions signed by judge . . . . .	—	—	1	1	2	3
Attendances in any court on subpoens . . . . .	—	—	1	1	3	10
Attendances as a commissioner to take affidavits . . . . .	14	13	10	37	46	48
Reports on private bills . . . . .	1	1	—	2	3	5
Attendances by counsel (each side) . . . . .	1,689	861	1,260	3,810	4,304	3,839
Appointment of commissioners . . . . .	5	164	121	290	373	497
Admissions . . . . .	422	—	2	424	378	363
Summons and order to try issue before sheriff . . . . .	421	324	453	1,198	1,556	943
Allowances, bye-laws . . . . .	—	3	—	3	4	4
Special commissions . . . . .	164	108	—	272	122	214
Crown case (defendant) . . . . .	—	—	—	—	—	—
Copying judge's notes . . . . .	36	—	—	36	160	—
Other proceedings . . . . .	—	—	1	1	8	—

The sittings in banco of the Court of Exchequer in the year 1864, relating to business on the revenue side of the court are shewn, as in preceding years, in a return furnished by the Queen's remembrancer, and were as follows:—One judgment on a motion for a new trial argued in 1863, rule discharged; five special cases, in three of which the decision was for the Crown, in one, judgment was for the defendant, and one was adjourned for judgment; four causes in equity, in three of which decree was for the Crown, and one was adjourned for judgment; five motions in court, and seventy-six motions in court (without argument), touching legacy and succession duties. In court of error, sitting as a court of appeal on a revenue case, the appeal was dismissed on the ground of no jurisdiction. In court of error, there was one case, in which judgment, as to the Crown was affirmed, and as to the defendant reversed.

On the 9th November the customary ceremony takes place of the presentation of the lord mayor of London to the barons of the Court of Exchequer; and on the morrow of Saint Martin (12th November), on the assembling of the council in the Court of Exchequer, nomination takes place of the sheriffs for England and Wales.

Returns of the proceedings into the court of error, Exchequer Chamber, have been made by the Masters of each of the three superior courts of common law in the same form as the returns furnished by them for each of the last two years, and shew the proceedings from each court to have been as follows for 1864:—

	Queen's Bench.	Common Pleas.	Exchequer.	Total.
Writs of error allowed . . . . .	—	—	—	—
Memorandums of error lodged . . . . .	24	5	10	39
Notices of appeal lodged . . . . .	27	19	16	62
	51	24	26	101
Set down for argument: . . . . .				
Errors . . . . .	19	1	6	26
Appeals . . . . .	14	9	6	29
Remanets from 1863 . . . . .	6	8	2	16
	39	18	14	71
How disposed of—				
Errors: . . . . .				
Judgments affirmed . . . . .	12	5	3	20
reversed . . . . .	2	—	—	2
Venire de novo . . . . .	—	—	1	1
Struck out . . . . .	1	—	1	2
Standing for judgment . . . . .	2	—	—	2
Appeals: . . . . .				
Judgments affirmed . . . . .	8	6	3	17
reversed . . . . .	3	2	2	8
Venire de novo . . . . .	—	—	—	—
Struck out . . . . .	—	2	1	3
	28	16	11	55
Remanets and standing for judgment . . . . .	11	2	3	16

The statements furnished by the Masters prove an increase in the receipts to the Suitors' Fund, and in the fees levied in 1864, as compared with the preceding year, amounting with regard to the former to 41·6, and with regard to the latter to 81 per cent.

In the amount disbursed for the Court of Common Pleas is included, it is stated, a sum of 284l. 13s., paid



to a stipstaff of the Queen's Bench Prison by direction of the Treasury. The following are the amounts, as shown in the returns for each of the three years, for 1864, with the totals for 1865:—

Suitors' Fee Fund.	1864.				Total preceding Year.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Amount of Fund on 1st January, 1864	19,425 18 6	18,642 6 11	11,245 4 5	44,313 4 10	41,024 17 7
Amount paid in during the year	57,251 18 9	50,084 12 4	62,818 13 10	170,155 2 10	120,813 6 5
Total to 1st January, 1865	36,877 10 2	33,798 10 3	74,068 16 8	94,468 7 6	161,888 4 0
Amount paid out during the year	54,102 8 11	50,739 4 2	65,758 2 1	170,594 15 2	117,524 19 2
Balance to 1st January, 1865	22,575 1 3	12,987 15 1	8,310 16 2	43,873 12 6	44,313 4 10
Fees levied by the common law Masters:					
Amount levied during the year 1864	24,311 6 8	18,671 16 6	26,824 2 0	69,807 4 6	64,537 11 6
Amount disbursed for salaries, &c.	15,203 17 9	16,905 5 0	13,259 10 2	39,428 10 11	39,218 0 4
Balance 1st January, 1865	9,107 8 3	7,766 13 6	13,564 11 10	30,578 13 7	25,318 11 2

"The following summary of returns presented to Parliament under the act 15 & 16 Vict. c. 73, for each of the years 1863 and 1864, shews the total amount of fees received in the superior courts of common law (inclusive of the fees levied by the Masters as shewn above) and in the office of the Queen's Remembrancer, with the payments for salaries, pensions, and expenses, and for compensations, and the deficiency of the fees:—

1863.		1864.		Increase.	Decrease.
	£ s. d.		£ s. d.	£ s. d.	£ s. d.
Fees received	92,982 18 6	99,565 7 9	0,002 9 3		
Payments, viz:	£ s. d.	£ s. d.			
Salaries, pensions, and expenses	75,914 9 3	77,942 0 3	2,027 11 0		
Compensations	24,222 12 4	21,854 16 3			
	100,137 1 7	99,196 16 6			2,367 16 1
Deficiency	7,174 3 1	Surplus	368 11 3		

The returns for the year 1864 furnished by the treasurers of county courts shew in the usual form for each of the fifty-nine county court circuits the proceedings for the recovery of debts, the proceedings under the Charitable Trusts Acts, and the proceedings under the act of 20 & 21 Vict., for granting protection to wives deserted by their husbands.

The proceedings in these courts under the Bankruptcy Act, 1861, for the year ending the 11th October, 1864, will be found in the tables under the head of Bankruptcy, as shewn in the returns prepared by the chief registrar of the Court of Bankruptcy, and presented to Parliament pursuant to the act. The

proceedings in bankruptcy are also further adverted to at pages xii to xv.

The proceedings under the jurisdiction of the county courts in contentious cases relating to probates or administration of wills are given as usual in the returns from the district courts of probate.

In the following abstract are shewn the number of plaints in the whole of the county courts and the totals under each heading in the returns, with reference to the recovery of debts, for the year 1864, in comparison with the preceding year, and with the average of the years 1859-63, inclusive:—

	1864.	1863.	Average, 1859-63.
Total plaints entered (including 119 in 1864 and 100 cases in 1863, sent from the superior courts)	738,481	799,254	809,561
Cases determined:			
With a jury	838	877	916
Without a jury	401,334	441,426	436,379
	402,172	442,305	439,169
Judgments:			
For plaintiff	236,758	252,344	287,395
For plaintiff by consent	147,855	171,168	167,998
For plaintiff by default	464	832	878
Nonsuit	8,440	8,865	9,324
For defendant	8,655	9,008	9,177
	402,172	442,305	474,762
Judgment summonses:			
Issued	76,613	110,713	100,687
Heard	42,308	62,363	57,851

	1864.	1863.	Average, 1859-63.
Warrants of commitment:-			
Issued	23,096	27,861	26,190
Debtors imprisoned	6,529	8,583	8,511
Executions against goods:-			
Issued	124,804	129,922	119,755
Sales made	3,810	4,075	4,317
Total amount for which plaints entered	£1,760,364	£1,842,749	£1,930,957
On judgments obtained by plaintiffs on original hearings:-			
Amount of debts	£380,755	£330,576	£354,765
Amount of costs	38,383	39,164	39,770
Total amount of fees on all proceedings	£244,841	£263,400	£250,708
Number of cases in which judgments were obtained:-			
	1864.	1863.	Average, 1859-63.
40s. and under	278,034	309,256	297,481
5l. and above 40s.	80,649	87,179	85,319
10l. " 5l.	28,840	30,537	30,975
20l. " 10l.	11,233	11,813	12,897
50l. " 20l.	3,405	3,513	3,867
By agreement above 50l.	11	11	—
	402,178.	442,305	

The number of days the courts sat in each circuit is shewn in the table, the total number of days for the whole fifty-nine circuits being 7796, which, calculating on the number of causes determined, gives an average of 51.5 causes for each day of sitting. In 1863 the total number of days was 7931; but the number of causes determined having been so much greater than in 1864, the average for each day of sitting was 55.6. In each year the number of days of sitting in some of the circuits is greatly higher than the general average.

In 1864 there were ten appeals; twenty-five orders to stay proceedings; and eighty-eight cases of certiorari to remove proceedings. In 1863 the numbers were respectively fifteen, forty-one, and sixty-eight; in 1862, twelve, forty-seven, and eighty-one.

The number of plaints entered continues to shew a considerable decrease. The decrease in 1864 amounts to 60,773, or 7.6 per cent., as compared with 1863; in 1863 there was a decrease of 48,034, or 5.7 per cent., as compared with 1862; and in 1862 a decrease of 56,669, or 6.3 per cent., as compared with 1861. The number in 1864 is less than the average of the five years 1859-63 by 71,020, or 8.7 per cent.

The causes determined in court were in the proportion of 54.4 per cent. to the total number of plaints entered, leaving 45.6 per cent. as the number of those settled out of court. In 1863 these proportions were 55.3 and 44.7 per cent. Of the judgments given 95.9 per cent. were for the plaintiff; 2.1 per cent. were nonsuits; and 2.2 per cent. were for the defendant; for 1863 these proportions are 95.9:—2.1, and 2.0 per cent. The proportionate number of debtors imprisoned is slightly lower; the proportionate number of executions issued somewhat higher for 1864 than for the preceding year. As compared with the average of five years, the proportionate number of debtors imprisoned is slightly lower; the proportionate number of executions is 6 per cent. higher.

In the amount sought to be recovered, as well as in the number of plaints entered, a decrease is shewn. As compared with 1863, this decrease is 82,365l., or 4.4 per cent., and follows a still larger decrease in each of the two preceding years. As compared with 1861, the decrease in 1864 is 407,953l., or 18.8 per cent. As compared with the average of the five years, 1859-63, it is 170,573l., or 8.8 per cent. The total amount gives an average of 2l. 7s. 8d. for each plaint entered: for 1863, this average was 2l. 6s. 1d.; for

1862 it was 2l. 7s. 4d.; for the average of the five years, 1859-63, it is 2l. 7s. 8d.

In the amount of debt for which judgments were obtained there is an increase of 41,179l., or 4.3 per cent. This amount is 55.7 per cent. of the amount for which plaints were entered, which is a higher proportion than in the preceding year.

The amount of costs and the amount of fees both shew a decrease in 1864, following a decrease in each of the two preceding years, and being less than the average of the five years.

The costs and fees together give an average of 14s. 1d. for each cause determined.

Of the cases in which judgments were obtained, those for 40s. and under were 69.1 per cent., which is about the usual proportion.

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The names of the whole of the local civil courts of ancient jurisdiction, thirty-three in number, which were included in the statistics of 1863, are given also in the tables of the present year. In nine of these, however, it will be seen that no proceedings took place, and in several of the remaining twenty-four the amount of business was inconsiderable. In several of the courts the cases were numerous, and the amounts sought to be recovered large. In the Sheriff's Court of London, 10,989 plaints were entered for 38,292l.; of these, 10,857 were for amounts not exceeding 20l.; 132 were for amounts above that sum. In the Court of Passage at Liverpool there were 3701 plaints entered, for a total amount of 202,466l.; of these, 1795 were for sums not exceeding 20l.; 1906 were for sums above 20l. At Manchester, and at Salford, where the proceedings are commenced by writ of summons, there were respectively 3912 and 2876 cases, for 46,270l. and 31,613l.

In the total number of proceedings commenced in all these courts, viz. 28,411, there is a decrease of 640,

or 2·2 per cent., as compared with the number in 1863, following a decrease of 1736, or 5·7 per cent., in the latter mentioned year, as compared with the number in 1862.

In the amount sought to be recovered (exclusive of the amount at Liverpool), viz. 169,414*l.*, there is an increase of 9929*l.*, or 6·2 per cent., as compared with the amount in 1863.

With regard to the Court of Passage at Liverpool, it was stated in former years that no record was kept of the amount for which plaints were entered. For 1864, the amount is given as 202,466*l.*, which raises the total amount under this head for all these courts to 371,800*l.*

The total amount of debt, exclusive of costs, for which judgment was obtained in 1864, was 132,376*l.*, being an increase of 24,110*l.*, or 22·1 per cent., on the amount for the preceding year.

The total amount of costs was 17,939*l.* The total amount of fees was 11,047*l.*; shewing, as compared with the amounts in 1863, an increase, with regard to the former, of 595*l.*, or 3·4 per cent., and with regard to the latter of 91*l.*

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(To be continued.)

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## THE JURIST.

LONDON, SEPTEMBER 16, 1866.

THE well-known case of *Blades v. Higgs and Another* (11 Jur., N. S., part 1, p. 701), which has recently been argued in the House of Lords, and decided an important question as to the right of property in game, decided in its earlier stage (10 C. B., N. S., 713) another question of less prominence, but of general applicability, viz. as to the right to resume by force possession of a personal chattel wrongfully withheld from the owner. This general question of recaption of personal chattels was not adverted to in the decision of the House of Lords, which was directed solely to the question of property in game. The first point, then, raised in *Blades v. Higgs and Another* was on the question of the right to resume property in chattels withheld wrongfully; and by the decision of the Court of Common Pleas, the right of the owner of goods was assimilated to the right of the owner of land, giving to the former the right of recaption; as to the latter, there is given the right of re-entry on his property wrongfully withheld. Whether or not such a view is reconcilable with the principle of our law, that discourages the substitution of personal violence for legal remedies, it has for some time past been considered as settled law, that a freeholder may by force enter and take possession of his freehold when wrongfully held from him by another person. The view taken by Baron Parke in *Harvey v. Brydges and Others* (14 M. & W. 42) having been generally adopted, that even if the freeholder commits a breach of the peace in regaining possession of his land, he incurs no civil liability. Baron Parke observed, that the point had been raised in *Newton v. Harland* (1 Man. & G. 644), and that if it were necessary to decide it, he should have no difficulty in saying, that where a breach of the peace was committed by a freeholder, who, in order to get possession of his land, assaulted a person wrongfully holding possession of it against his will, although the freeholder might be responsible to the public in the shape of an indictment for a forcible entry, he was not liable to the other party; and that he could not see how it was possible to doubt that it was a perfectly good justification to say that the plaintiff was in possession of the land against the will of the defendant who was owner, and that he entered upon it accordingly, even though, in so doing, a breach of the peace was committed.

With regard to personal chattels, the case of *Patrick v. Colerick* (3 M. & W. 483) had decided that the owner of goods might enter the land of another person, who had wrongfully taken the goods, and put them there, and might there retake the goods, without incurring any civil liability; and this is now extended even to taking goods out of the actual manual possession of a wrongdoer. The second count of the declaration in *Blades v. Higgs* (10 C. B., N. S., 901; 7 Jur., N. S., part 1, p. 1289) was for assaulting the plaintiff, and taking away his goods; and the third plea

was, that the plaintiff was wrongfully possessed of rabbits belonging to the defendants' master, and that the defendants, as his servants, requested the plaintiff not to take them away, and to quit possession thereof to the defendants as such servants, and, upon his refusing to do so, gently took them from him; and to this plea, besides joining issue, the plaintiff also demurred, and thus the question of law was raised, whether the right of recaption of chattels could be exercised when it could not be effected without committing an assault; and the Court held that it could. And Erle, C. J., in delivering the judgment of the Court, said that if the defendants had actual possession, and the plaintiff took them from them against their will, it was not disputed, that the defendants might justify using the force sufficient to defend their right, and retake the chattels; and that there was no substantial distinction between that case and the one before the Court, for if the defendants were the owners of the chattels, and entitled to the possession of them, and the plaintiff wrongfully detained them, the defendants in law would have the possession, and the plaintiff's wrongful detention, against the request of the defendants, would be the same violation of the right of property as the taking of the chattels out of the actual possession of the owner. The judgment then refers to the owner of land having a right to re-enter thereon, and to use force sufficient to remove a wrongdoer therefrom. A passage from *Harvey v. Brydges* is then cited at length, and the judgment concludes in the following manner:—"In our opinion, all that is so said of the right of property in land applies in principle to a right of property in chattels, and supports the present justification. If the owner was compellable by law to seek redress by action for a violation of his right of property, the remedy would be often worse than the mischief, and the law would aggravate the injury, instead of redressing it." We must here remark, that these views, though they must now be taken to be the law, are in direct conflict with the opinions cited with approval by Tindal, C. J. (8 Bing. 192)—"As the public peace is a superior consideration to any one man's private property, and as, if individuals were once allowed to use private force as a remedy for private injuries, all social justice must cease; the strong would give law to the weak, and every man would resort to a state of nature; for these reasons, it is provided that the natural right of recaption shall never be exerted where such exertion would occasion strife and bodily contention, or endanger the peace of society."

This brings us to the main question decided in *Blades v. Higgs*, which next appears in 12 C. B., N. S., 501; 8 Jur., N. S., part 1, p. 1012. The plaintiff was a licensed dealer in game, and had bought two bags of dead rabbits from some men who had been on the Marquis of Exeter's land, and caught the rabbits and killed them there, and then had carried them away, and forwarded them by rail to the plaintiff at Stamford, who had just loaded them on to his barrow to take them away from the station, when they were claimed and taken from him by

the Marquis of Exeter's servants, the defendants, as the Marquis of Exeter's property. The case came on for trial before Mr. Justice Willes, and that learned judge ruled, that if a person goes on the land of another and kills a rabbit, or any number of rabbits, and carries them away and sells them, the servants of the landowner have no right to go to the game dealer and take them from him, and that the property in the rabbits would be in the game dealer, though the taking them was an act of trespass on the part of the persons who supplied him with them. The learned judge, however, while conforming to what he conceived to be the law, dissented from its policy, and said he never could understand why such a law should exist, because if a man had land, and chose to rear pheasants and what not upon it, and incurred the labour and expense of feeding and preserving them (at much more cost than ordinary barn-door fowls), he never could understand why the law as to larceny should not apply to them. He ruled, however, not merely that the rabbits were not the subjects of larceny, but that they had become the property of the men who caught and killed them as soon as that process was complete, though the men were liable to be proceeded against as trespassers, by action or under the game laws. This was overruled by the Court of Common Pleas, and a new trial ordered, Willes, J., concurring, and saying it was impossible to get over the authority of *Rigg v. The Earl of Lonsdale* (1 H. & Norm. 923); at the same time suggesting that, should the case be argued in the Court of Exchequer Chamber, it would be as well to compare the dictum of Lord Holt in *Sutton v. Moody* (1 Ld. Raym. 250), (on which it seems all the decisions have ever since proceeded), with the passage in Justinian's Institutes, lib. 2, tit. 1, sect. 12, which he read at length. This celebrated dictum of Lord Holt's was as follows:—If A. starts a hare on the ground of B., and hunts it, and kills it there, the property continues all the while in B. But if A. starts a hare on the ground of B., and hunts it into the ground of C. and kills it there, the property is in A., the hunter, but A. is liable to an action of trespass for hunting in the ground of B. as well as of C. But if A. starts a hare, &c. in the forest or warren of B., and hunts it into the ground of C., and there kills it, the property remains all the while in B., the proprietor of the warren, because the privilege continues. The substance of the passage cited from the Institutes, on the other hand, being, that the person who takes and reduces into possession any wild animal, whether on his own land or on the land of another, acquires the property in it; and such undoubtedly was the Roman law. The rule of the civil law was not, however, recognised either by the Court of Exchequer Chamber or the House of Lords as part of the common law of England; and the Court of Exchequer Chamber affirmed the judgment of the Court of Common Pleas (13 C. B., N. S., 844; 9 Jur., N. S., part 1, p. 1040), and the House of Lords affirmed the judgment of the Court of Exchequer Chamber. (See 11 Jur., N. S., part 1, p. 701). Lord Holt's dictum seem to have controlled the decisions of the Courts throughout, and to have been followed with something like a blind obedience from the time it

was first enunciated. No argument was raised against it in *Churchward v. Studdy* (14 East, 249); it governed *Reg. v. Lonsdale*, and forced the decision of *Blade v. Higgs*, in the Common Pleas, carried it safely through the Exchequer Chamber, and finally landed it in the House of Lords. "All," said Williams, J., in the court below, "who have lectured on and taught the law of England for the last century, have adopted Lord Holt's doctrine on the subject." The Lord Chancellor cited the whole passage, apparently with approval; and Lord Cranworth held, that it was safe and just to adhere to the law as laid down by Lord Holt. Lord Chelmsford alone dared to meddle with some part of this impregnable statement, and ventured to doubt the latter part of it, though he accepted the first part as conclusive on the question before the House of Lords. Now, though there is not much room for any doubt as to the reasonableness of the first part of Lord Holt's dictum, as to the latter part there is very considerable doubt. If A. start a hare on the ground of B., and hunt it into the ground of C., and kill it there, and the laws thereupon vest the property in the hare in A., the hunter, who has trespassed on the land to catch and kill it, then the law could not consistently, as in *Blade v. Higgs*, prevent the trespasser from acquiring a property in the game, both started and killed on the owner's land. This is very clearly put by Lord Chelmsford, who said, that he had some difficulty in understanding why the wrongdoer was to acquire the property in the game, under the circumstances so supposed, and proceeded to observe, that if the animal had left the land of B., and had passed into the land of C. of its own will, and had been, immediately it crossed the boundary, killed by C., it would unquestionably have been his property; why, then, should not the act of a trespasser, to which C. was no party, have the same effect as to his right to the animal, as if it had voluntarily quitted the neighbouring land? And why not only should B. lose his right to the game, and C. acquire none, but the property, by this accident of the place where it happened to be killed, be transferred to the trespasser? That it would appear to be more in accordance with principle to hold, that if the trespasser deprived the owner of the land where the game was started of his right to claim the property, by unlawfully killing it on the land of another, to which he had driven it, he converted it into a subject of property for that owner, and not for himself. But that the first proposition stated by Lord Holt, with respect to game started and killed on the land of the same owner, was free from all difficulty, and was sufficient to dispose of the question then before the House of Lords.

#### JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Continued from p. 348).

A return of the proceedings of the Lord Mayor's Court of London in the year 1864, made by the registrar, shews the proceedings of the court in actions and in foreign attachments in the same form and with the same detail as the returns for preceding years.

The number of actions entered during the year was 4723, shewing an increase of 398, or 9·2 per cent., upon the number for the preceding year. In 1863 there was



an increase of 216, or 5·3 per cent., upon the number in 1862, and in 1862 an increase of 179, or 4·5 per cent., upon the number in 1861. There were also eleven ejectments, and ten apprentice petitions, in 1864. The amount for which actions were entered was 123,569*l.*, being an increase of 20,489*l.*, or 19·8 per cent., upon the amount in 1863, the amount for the latter year having exceeded the amount for 1862 by 12,561*l.*, or 13·9 per cent., and the amount for 1862 having been greater than the amount for 1861 by 10,436*l.*, or 13 per cent.

The classification of the actions, according to the amounts for which they were returned, shews that 20 only, or 0·4 per cent. of the whole, were for amounts under 5*l.*; 1363, or 28·8 per cent., were for 5*l.* and under 10*l.*; 2022, or 42·8 per cent., for 10*l.* and under 20*l.*; 1318, or 28 per cent., were for 20*l.* and above.

The return shews further, as given in the tables, the number of orders to stay proceedings under the classified amounts of debts. It shews the number and nature of the judgments, the verdicts, the executions, the cases of certiorari, the number of judgment summonses issued, the number heard, and the number of adjourned hearings, the number of committals issued, and the number of debtors imprisoned.

The number of foreign attachments issued was 884, for a total amount of 741,705*l.* Of these, 328, for a total amount of 207,030*l.*, were withdrawn, being settled by the parties. In the number issued there is an increase of 184, or 26·3 per cent., upon the number in the preceding year. In the amount there is an increase of 287,260*l.*, or 63·2 per cent. The return shews further the number of verdicts and of judgments for the plaintiff and for the garnishee; and under bills of costs the number of verdicts and of judgments for the plaintiff and for the approver respectively. The fees amounted on ordinary proceedings to 3562*l.*, on compensation cases to 394*l.*

The return for 1864, furnished by the registrar of the court of the Vice-Warden of the Stanneries, shews the proceedings of the court in equity and common law, and for the winding up of incorporated and unincorporated companies under the Companies Act, 1862, and proceedings not in any cause.

Under the equity jurisdiction, the proceedings extend to both the counties of Cornwall and Devon; under the common-law jurisdiction to Cornwall only, no causes having been tried in respect of the stannaries of Devon. The proceedings on petitions for winding up extend to both counties. Under proceedings not in any cause, four matters only are recorded in Cornwall. The details of the proceedings, as stated in the return, are given in the table, and shew a decrease of business in the court as compared with the preceding year.

In the statistics of 1864, the proceedings in bankruptcy since the Bankruptcy Act, 1861, came into operation, were given for each of the years ended the 11th October, 1862, and 11th October, 1863, as shewn in the returns framed by the chief registrar of the court for those years respectively, and presented to

Parliament pursuant to the 67th section of the act. In continuation, the proceedings during the year ended the 11th October, 1864, as shewn in the chief registrar's return, which was laid before Parliament in February last, are given in the present volume. The return for 1864, which will be found in the tables arranged in the same form as the returns for the preceding years, shews the number of adjudications in bankruptcy during the year, in the London district court, the county district courts, and the county courts acting in bankruptcy, under each form of procedure, to have been as follows:—

<i>Number of Adjudications of Bankruptcy.</i>	<i>London District Court.</i>	<i>County District Courts.</i>	<i>County Courts.</i>	<i>Total.</i>
On petition of a creditor	185	354	56	595
On petition of the debtor	1609	1001	2650	5260
By registrars at the prisons	289	178	437	904
On petitions in formâ pauperis	220	3	233	456
On judgment debtor summonses	8	1	—	9
Total . . . . .	2311	1537	3376	7224

In the total number of adjudications there is a decrease of 1246, or 14·7 per cent., as compared with the number for the preceding year. As compared with the number in 1862 the decrease is 2439, or 25·3 per cent. The decrease appears as well in the London district court as in the county district courts and the county courts. As compared with the numbers for 1863 the proportionate decrease in 1864 is as follows:—London district court, 21·7 per cent.; county district courts, 8·1 per cent.; county courts, 12·3 per cent. In the number of adjudications on petitions of a creditor the decrease was 79, or 11·8 per cent.; on the petition of a debtor it was 884, or 14·4 per cent.; in the number by registrars at the prisons there was an increase of 37, or 4·2 per cent.; in the number on petitions in formâ pauperis the decrease was greatest, amounting to 324, or 41·6 per cent.; in 1863 there were five cases only on judgment debtor's summonses.

The number of adjudications where the debts exceeded, and the number where they did not exceed, 300*l.*, the former being in the proportion of 41·1, the latter of 58·9 per cent. to the total number of adjudications, were as follows:—

<i>Number of Adjudications.</i>	<i>London District Court.</i>	<i>County District Courts.</i>	<i>County Courts.</i>	<i>Total.</i>
Where the debts of the bankrupt exceeded 300 <i>l.</i>	1301	1504	167	2972
Where they did not exceed 300 <i>l.</i> . . . . .	1010	33	3209	4252

The total amount of gross produce realised from the several bankrupts' estates, was as follows:—

	<i>London District Court.</i>			<i>County District Courts.</i>			<i>County Courts.</i>			<i>Total.</i>		
	<i>£</i>	<i>s.</i>	<i>d.</i>	<i>£</i>	<i>s.</i>	<i>d.</i>	<i>£</i>	<i>s.</i>	<i>d.</i>	<i>£</i>	<i>s.</i>	<i>d.</i>
Amount realised by creditors' assignees . . .	178,528	0	4	164,163	17	6	7,610	10	7	350,302	8	4
Amount realised by official assignees . . .	68,607	6	11	212,148	10	9	46,144	14	7	327,233	12	3
	247,135	7	3	376,312	8	3	53,755	5	2	677,536	0	7

The total amount realised was less than the total amount for the preceding year by 21,062*l.* 9*s.* The great decrease was in the country district courts, where the amount realised was less in 1864 than in the preceding year by 81,776*l.* 9*s.* 2*d.* In the county courts also there was a decrease in the amount realised in 1864 of 1,235*l.* 12*s.* 9*d.* In the London district court, on the contrary, the amount realised in 1864 exceeded the amount in 1863 by 61,949*l.* 12*s.* 11*d.*

The number of adjudications and the amounts realised by the official assignees in the several district courts are stated, in a note to the returns, as follows:—

	<i>Number of Adjudications.</i>	<i>Amount realised by Official Assignees.</i>
Birmingham district:		
Birmingham . . . . .	302	£15,242 1 7
Nottingham . . . . .	63	10,643 11 10
Bristol district . . . . .	162	6,780 0 0
Exeter district . . . . .	96	12,085 1 9
Leeds district:		
Leeds . . . . .	246	105,101 15 1
Hull . . . . .	47	10,863 0 0
Sheffield . . . . .	23	11,990 0 0
Liverpool district . . . . .	266	22,203 13 5
Manchester district . . . . .	234	11,961 14 8
Newcastle district . . . . .	93	5,702 12 2

The return next shews the number of cases in which a dividend was made, and the number in which there was no dividend. Of the former there were 1886, of which 328 were in the London district court; 680 in the country district courts; and 628 in the county courts. Of the latter there were 5324, of which 2588 were in the London district court; 841 in the country district courts; 1895 in the county courts. The cases in which there was a dividend are in the proportion of less than 30 per cent. to the cases in which there was no dividend. In the preceding year, this proportion was 17·7 per cent. only. The rates in the pound at which dividends were made were as follows, with the proportion per cent. of the number at each rate to the whole number:—

Number of cases under 2 <i>s.</i> 6 <i>d.</i> . . . . .	848	..	53·5
"  "  2 <i>s.</i> 6 <i>d.</i> and under 5 <i>s.</i> . . . . .	381	..	24·0
"  "  5 <i>s.</i> "  "  7 <i>s.</i> 6 <i>d.</i> . . . . .	192	..	12·1
"  "  7 <i>s.</i> 6 <i>d.</i> "  "  10 <i>s.</i> . . . . .	53	..	3·3
"  "  10 <i>s.</i> "  "  15 <i>s.</i> . . . . .	50	..	3·2
"  "  15 <i>s.</i> "  "  20 <i>s.</i> . . . . .	25	..	1·5
"  "  20 <i>s.</i> . . . . .	37	..	2·3

The number of discharges granted, suspended, and refused, as stated in the return, were respectively 5332, 316, and 80.

These numbers are to the number of adjudications of bankruptcy during the year respectively in the proportions of 73·8, 4·3, and 0·1 per cent. These proportions in the preceding year were 80·2, 4·5, and 1·4 per cent. In 1862 they were 62·6, 5·4, and 1·6 per cent., shewing a decreasing ratio in the numbers of discharges suspended or refused.

The number of trust deeds, as stated in the return, registered within the year, in pursuance of the 192nd section of the Bankruptcy Act, 1861, was 3604, the amount of stamp duty upon them being 9505*l.*, and the gross value of the estates and effects affected being 3,802,000*l.* Of these deeds 2208 were deeds of assignment; 1348 deeds of composition; and 48 deeds of inspektorship.

The number of bills taxed in the Master's office, as stated in the return, was 6148, being an increase of 1403, or 29·5 per cent. upon the number in the preceding year. This number exceeds also the number in 1862 by 885, or 16·8 per cent.

The total gross amount of the bills taxed was 87,064*l.* 1*s.* 3*d.*, being less than the amount in the pre-

ceding year by 7,198*l.*, or 7·8 per cent., and less than the amount in 1862 by 24,875*l.*, or 22·3 per cent.

The different amounts taxed were:—

	<i>£</i>	<i>s.</i>	<i>d.</i>
Solicitors' bills . . . . .	65,350	4	10
Messengers' bills . . . . .	9,552	0	1
Assignees and others for travelling expenses, &c. . . . .	232	7	6
Auctioneers' bills . . . . .	7,607	16	0
Accountants' bills . . . . .	4,301	12	9

The amount struck off on taxation was 8118*l.* 10*s.* 8*d.*, or upwards of 9 per cent. on the total gross amount, being about the same proportion as for each of the two preceding years.

There were fifty-eight appeals; in eighteen of the cases the judgments were affirmed; in fourteen reversed; in one case the judgment was varied; twenty-five of the cases were pending, abandoned, or arranged.

Under trust deeds there were ten appeals; in eight of which the judgments were affirmed; in one case the judgment was reversed; and one case was pending, abandoned, or arranged.

From the county courts there were two appeals only; in one the judgment was varied; the other case was pending, abandoned, or arranged.

The amount of fees received by the messengers for business under the act was 34,496*l.* 15*s.* 2*d.*, being less by 416*l.* 14*s.* 1*d.* than the amount for the preceding year. The total payments amounted to 26,121*l.* 16*s.* 6*d.*, leaving a surplus of 8374*l.* 18*s.* 7*d.* Of the receipts 13,875*l.* 18*s.* 9*d.*, and of the payments 10,181*l.* 5*s.* 11*d.*, were by the messengers in London; the remainder by the messengers in the country district courts.

The amount of deposits received by the messengers was 16,368*l.*, shewing an increase of 4096*l.*, or 42·8 per cent., on the amount for the preceding year. The amount of the deposits returned or applied to the payment of bills was 10,485*l.*, leaving a balance of 5882*l.* in the hands of the messengers applicable to the payment of costs in cases not concluded, or to be returned to persons making the deposits.

Of the amounts received and returned, 12,565*l.* of the former, and 7864*l.* of the latter, and 4700*l.* of the balance remaining in the hands of the messengers were in the London district court, the remainder in the country district courts. The amount of deposits received by the high bailiffs in the county courts was 7246*l.*, shewing a decrease of 971*l.*, or 11·8 per cent. as compared with the amount for the preceding year; the amount returned by them, or applied to the payment of bills, was 6243*l.*, leaving a balance of 1003*l.* remaining in the hands of the high bailiffs.

The amount of fees in bankruptcy received by the registrars of county courts, as shewn in the return, was 12,177*l.*, being an increase of 1458*l.* or 13·6 per cent. on the amount for the preceding year, and following an increase of 2875*l.*, or 36·6 per cent. in 1863, as compared with the amount in 1862. The payments in 1864 amounted to 1498*l.*, leaving 10,679*l.* as the net remuneration of the registrars. The fees in bankruptcy received by the high bailiffs of the county courts amounted to 12,816*l.*, being less by 2098*l.*, or 14 per cent., than the amount for the preceding year. The payments amount to 7217*l.* The net remuneration remaining was 5607*l.* (The payments in certain of the courts exceeded the receipts).

The total revenue of the Court of Bankruptcy for the year was 176,815*l.*, being an increase of 52,707*l.*, or 42·4 per cent., on the amount for the preceding year. The total expenditure under the different heads shewn in the return was 140,894*l.* An investment of 25,000*l.* in Consols was made to the credit of the chief registrar's account.

The total amount of money received by the Bank of England was 762,968*l.*, being less than the amount shewn in the return for the preceding year by 60,643*l.* The total amount paid by the Bank was 877,471*l.*

The return further gives a statement of the cash and stock balances on the 11th October, 1864, with an appendix shewing the salaries and compensations paid to all officers and persons connected with the court; and all expenses and payments for the year.

The returns furnished by the different officers of the High Court of Chancery for the year ended the 1st November, 1864, shew the nature of the proceedings and the amount of business in the different branches of the court, in the same forms and under the same headings as the returns for preceding years. The details, as shewn in the returns for each branch, are given in the tables. In the following summaries

the numbers for 1864 are stated in comparison with the corresponding numbers for the preceding year, and with the average of the numbers for the five years from 1859 to 1863, inclusive, except with regard to the winding-up cases, and to the office of the registrar in lunacy, the returns extending, with regard to the former, only to the year 1861, and with regard to the latter to 1860.

The return made by the registrars shews the proceedings in their office, distinguishing the business in each of the three appellate courts of the Lord Chancellor, the Lord Chancellor and Lords Justices, and the Lords Justices, and in each of the four original courts of the Master of the Rolls, and of each of the three Vice-Chancellors, describing the nature of the proceedings, and shewing the state of the business, as in the following abstract:—

<i>Nature of Proceedings.</i>	<i>For Hearing at the commencement of the Year.</i>	<i>Set down during the Year.</i>	<i>Heard during the Year.</i>	<i>Otherwise disposed of.</i>	<i>Remanet at the end of the Year.</i>
Pleas . . . . .	—	7	5	—	2
Demurrers . . . . .	17	69	60	10	16
Exceptions to pleadings . . . . .	4	20	20	2	2
Motions for decrees . . . . .	236	1140	998	144	294
Causes . . . . .	71	347	289	36	93
Special cases . . . . .	1	25	16	2	8
Causes, claims, and causes and matters for further directions and further consideration . . . . .	96	557	555	24	76
Rehearings and appeals . . . . .	33	99	94	12	26
Appeal motions . . . . .	11	82	76	7	10
Appeal petitions . . . . .	1	16	13	—	4
Total . . . . .	473	2362	2066	237	531
Total, 1863 . . . . .	396	2042	1820	148	472
Average of totals, 1859-63 . . . . .	422	2131	1952	161	499

The matters for hearing at the commencement of the year shew an increase of 18·6 per cent. on the number for 1863, and of 6·0 per cent. on the average of the five years; the matters set down during the year shew an increase of 15·6 and 10·8 per cent. respectively; the matters heard during the year, an increase of 13·5 and 5·8 per cent.; the matters otherwise disposed of, of 60·1 and 40·2 per cent.; and the remanet at the

end of the year, of 12·5 and 20·9 per cent. respectively. The remanet at the end of the year 1863 shewed an increase of 18·6 per cent. as compared with 1862; in each of the years 1861 and 1862 there had been a decrease.

The chief other business in the office of the registrars returned under the following heads shews also a considerable increase, as does also the amount of fees:—

	1864.	1863.	Average, 1859-63.
Orders made on the hearing of petitions under the Winding-up Acts . . . . .	35	39	16
Orders made on the hearing of petitions of right . . . . .	1	—	—
Orders made on the hearing of other petitions . . . . .	2,731	2,485	2,458
Orders made on the hearing of special motions . . . . .	1,138	1,107	1,059
Orders on summons, drawn up by the registrars . . . . .	6,866	6,513	6,036
Orders on motions or petitions of course . . . . .	595	629	533
Certificates for sale or transfer or delivery of stock or other securities . . . . .	3,122	2,936	2,948
Amount of fees levied by stamps . . . . .	£13,630	£12,894	£12,814

The cases standing for judgment at the commencement and at the end of the year were respectively 9 and 14. In the preceding year they were 12 and 9.

The sittings of the different judges in court were as follows:—the Lord Chancellor, 60 days; the Lords Justices, 148; the Master of the Rolls, 154; the three Vice-Chancellors, respectively, 167, 166, 169; there were no sittings by the Lord Chancellor and Lords Justices. The total number, viz. 864, exceeds the number for the preceding year by 32.

The number of causes transferred from each judge to other branches of the court was 102. The judge from whom and the judge to whom transferred are shewn in the return.

The causes tried by the court were:—Without a jury, four; with a jury, three. There was one trial with a jury awaiting a hearing at the end of the year. The number of cases referred to the conveyancing counsel of the court was 367, exceeding the number in the preceding year by 51.

(To be continued).

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## THE JURIST.

LONDON, SEPTEMBER 23, 1866.

THE general election of 1865 is over, and the supporters of Lord Palmerston's Government will rejoice at the result. The Government had a working majority in the House of Commons in the last Parliament, and they will have a still larger majority in the new Parliament. It may be a question yet to be determined whether the Liberals of the new Parliament are not, in fact, more Conservative than the Liberals of the old; but with this we have nothing to do. There is, however, a subject which will be uppermost in the minds of many of the elected and rejected, viz. the validity of the returns. It is rumoured that when the new Parliament assembles there will be an unusual number of petitions. It may, therefore, be interesting to consider the law as it now stands for preventing corrupt practices in the election of members to serve in Parliament. Whatever may have been the practice in other countries where free institutions have been established, it is certain that in this country, from very early times, bribery at the election of members to serve in Parliament has been regarded by the Legislature as a high offence. Indeed, at common law, even to offer a bribe was a crime, probably a misdemeanour. See the judgment of Lord Mansfield in *Rees v. Vaughan* (4 Burr. 2500), and the observations of Lord Eldon in *Ward v. Broughton* (3 V. & B. 173). Parliament, however, do not appear to have imposed any penalty on the offence of bribery until the 2 Geo. 2, c. 24, s. 7, whereby it was enacted, that if any person, having a right to vote at any election, should ask or receive any money or other reward, by way of gift, loan, or agreement, for the same, to give, or to forbear from giving, his vote at any election, such person should for every such offence forfeit the sum of 500*l.*, and should for ever be disqualified to vote at any election. Several other acts were passed having the same object, viz. purity of election. In 1809 the Legislature, by the 49 Geo. 3, c. 118, imposed a penalty of 500*l.* on any person who should enter into any engagement, for money or reward, to procure the election or return of members to Parliament. This statute aimed at putting an end to the sale of "rotten boroughs," as they were termed by purists. The 7 & 8 Geo. 4, c. 37, forbade the giving of ribbons and cockades by candidates, and provided, that persons having votes, and employed by candidates, were disqualified to vote. This last provision was an important enactment, because, up to the time of the passing of that act, any candidate whose purse was long enough to employ half a constituency in a borough, had only to do so, and was sure to be returned, provided his opponent's employment was not more lucrative, in which case, of course, the election was lost. These statutes, however, are all now repealed by the Corrupt Practices Prevention Act, 1854, which consolidated most of the previous statutes, and is the act now in force upon the subject. The 2nd and 3rd sections of this statute define "bribery."

The first of these sections provides—First, "that every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or to refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted, or refrained from voting, at any election." Secondly, "Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure, any office, place, or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election." Thirdly, "Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election." Fourthly, "Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election." Fifthly, "Every person who shall advance, or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election." The act provides that any persons so offending shall be guilty of a misdemeanour, and shall be liable to forfeit the sum of 100*l.*

Sect. 3 provides, "that every voter who shall before or during any election, directly or indirectly, by himself or by any other person in his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election." Secondly, "Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election, shall be guilty of a misdemeanour, and shall be liable to forfeit 10*l.* to any person who shall sue for the same."

These two sections, if enforced, would, beyond all doubt, put an end to any corruption whatever at elections. The former imposes a heavy penalty on the



person who offers, and the latter on the person who receives, a bribe; and as the sections are framed, any person either giving or receiving any valuable consideration whatever for his vote or his interest, would most certainly be caught in the meshes of the statute. But since the penalty is only recoverable by an informer, it would be difficult, except in notorious cases of corruption, to succeed in enforcing the act.

The stat. 4 & 5 Vict. c. 57, however, which is repealed by the act of 1854, after reciting that the laws in being are not sufficient to hinder corrupt and illegal practices in the election of members to serve in Parliament, provided, that whenever any charge of bribery shall be brought before any select committee of the House of Commons, appointed to try and determine the merits of any return or election of a member or members to serve in Parliament, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed. Neither shall it be necessary to prove agency in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained; and the committee, in their report to the House of Commons, shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed, to the knowledge and consent of the sitting member or candidate at the election. This statute was a decided step on the road to the suppression of bribery and corruption, because, both under the old statute, 2 Geo. 4, c. 24, and under the new Corrupt Practices Prevention Act, 1854, the proceedings in proof of bribery, and to recover the penalties, are only enforceable at the suit of informers, who may or may not think it fit or worth while to take proceedings; whereas, under this act, it is for the House, on the hearing of a petition, to report on distinct and separate acts of bribery, if proved, and the House will take care to vindicate its own purity, by directing proceedings wherever they discover, on the hearing of the petition, that bribery has been committed.

Sect. 4 of the new act defines "treating" to be, corruptly to give or provide, or cause to be given or provided, or to be accessory to the giving or providing, or to pay wholly or in part, any expense incurred for any meat, drink, or entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person, or any other person, to give, or to refrain from giving, his vote at such election, or on account of such person having voted, or refrained from voting, or being about to vote, or refrain from voting, at such election; and the section imposes a penalty of 50*l.* on the person treating, and forfeiture of vote to the person treated. If this section be really enforced, elections will become a severe and "dry" reality.

The next section provides for "undue influence." It provides, that "every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict, or

threaten the infliction, by himself, or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person, in order to induce or compel such person to vote, or to refrain from voting, or on account of such person having voted, or refrained from voting, at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter either to give, or to refrain from giving, his vote at any election, shall be guilty of a misdemeanour, and liable to forfeit the sum of 50*l.*" The statute provides various other means for suppressing bribery, such as by penalty, on conviction, of the name of the offender being struck out of the register, and forbids, under a penalty, the distribution of ribbons and cockades. It also provides that all the costs and expenses at any election shall be paid by an officer, to be appointed under the act, by the returning officer in each constituency, to be called the "election auditor." This last office has since been abolished, and the election expenses are now paid by the returning officer. Sect. 23 declares, "that the giving, or causing to be given, to any voter on the day of nomination or day of polling, on account of such voter having polled, or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act." And sect. 36 provides, that if any candidate shall be declared by an election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, he shall be incapable of sitting in Parliament for such county, city, or borough during the Parliament then in existence. Sect. 23 ought, and probably has, materially reduced the cost of an election. The custom of giving an entertainment to voters at the election was universal until the passing of this act.

It is clear that the Legislature is determined to put down bribery, and to establish a purity at elections which, if bona fide carried out, will indeed be a glory and honour to the country. Bribery, no doubt, is in many cases difficult to detect, indeed often impossible, when we bear in mind that, both at common law and under the statute, the offence is complete if the bribe be given or offered, even though the voter do not vote for the candidate in whose behalf the bribe was given. Vide *Sulston v. Norton* (3 Burr. 1236), where Lord Mansfield observes, "The offence was completely committed by the corruption, whether the other party shall perform his promise or not;" and per Patteson and Coleridge, JJ., in *Henlow v. Faucett* (3 Ad. & El. 51)—"If, in fact, B. never did so intend, A.'s offence was complete by his giving the money for the purpose of inducing B. to vote, and by B. professedly accepting it on those terms."

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LEGAL APPOINTMENTS.—William Henry Doyle, Esq., has been appointed Chief Justice of the Bahamas. Mr. Hanson, of the Chancery bar, succeeds Mr. Trevor at the Stamp Office. Mr. Charles P. Phillips has been appointed by the Lord Chief Justice revising barrister for the City of London, in the place of Mr. Hanson. Joseph Henry Wattle, Esq., has been appointed one of her Majesty's Counsel for the island of Nevis.

JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Continued from p. 355).

The total of the proceedings in the chambers of the Master of the Rolls, and of each of the three Vice-

Chancellors, as shewn in the returns furnished by the respective chief clerks, were as follow for the year ended the 1st November, 1864, in comparison with the proceedings in 1863, and with the average of the totals for 1859-63.

The proceedings in each of the chambers separately for 1864 are given in the table :—

	1864.	1863.	Average, 1859-63.
<b>Summonses to originate proceedings:</b>			
For the administration of estates . . . . .	409	405	410
Under the Charitable Trusts Acts . . . . .	12	12	36
For appointment of guardians and maintenance of infants . . . . .	120	136	138
For other purposes . . . . .	124	148	130
	685	701	714
Other summonses . . . . .	18,626	17,207	16,481
<b>Orders made:</b>			
Of the class drawn up by the registrars . . . . .	7,061	6,768	6,543
Of the class drawn up in chambers . . . . .	6,256	5,420	5,231
Orders brought into chambers for prosecution . . . . .	1,998	1,820	1,931
Number of advertisements issued . . . . .	1,012	878	905
<b>Debts claimed and adjudicated upon :</b>			
Number of debts . . . . .	4,487	5,248	4,749
Amount of debts proved . . . . .	£1,056,108	£1,953,259	£1,234,419
<b>Accounts passed (other than receivers' accounts):</b>			
Number of accounts . . . . .	1,075	1,044	1,150
Receipts therein . . . . .	£5,421,873	£6,637,536	£5,806,536
Disbursements and allowances therein . . . . .	£4,998,892	£6,082,900	£5,353,671
<b>Receivers' accounts passed :</b>			
Number of accounts . . . . .	515	594	539
Receipts therein . . . . .	£1,169,727	£1,590,208	£1,295,407
Disbursements and allowances therein . . . . .	£936,602	£1,237,973	£1,053,277
<b>Sales of estates under orders of court :</b>			
Number of sales . . . . .	494	539	483
Amount realised . . . . .	£1,947,223	£1,487,569	£1,456,080
<b>Purchases of estates under orders of court :</b>			
Number of purchases . . . . .	92	94	87
<b>Number of contributories :</b>			
Included in list of contributories . . . . .	2,800	2,121	1,854
Excluded from lists of contributories . . . . .	114	122	119
<b>Orders for winding up companies:</b>			
Amount of calls made . . . . .	£614,153	£462,453	£628,261
Total amount of fees levied by stamps . . . . .	£9,752	£10,021	£10,129
Number of titles and other matters directed to be investigated by the conveyancing counsel . . . . .	416	347	355
Number of certificates filed . . . . .	2,240	2,255	2,312
Number of appointments (by summonses, adjournment, or otherwise) disposed of . . . . .	43,842	41,300	40,083
Number of orders under which accounts and inquiries were pending at date of return . . . . .	2,764	2,453	2,417
Number of orders for winding up companies then pending : . . . . .	113	106	107

Returns have been forwarded for the year ended the 1st November, 1864, by the chief clerks to the Master of the Rolls and of each of the Vice-Chancellors, as furnished to them by the official managers or official liquidators in each case of winding up pending in the respective chambers during the year.

From the abstract of these returns given in the tables, it appears that the number of cases pending was 104.

In fifteen of the number of cases shewn in the returns for 1863, the proceedings appear to have closed. In thirteen of the cases pending in 1864, the official managers or official liquidators appear to have been appointed in that year. The totals of the numbers and amounts shewn in the returns for 1864 are as follow, in comparison with the totals for the preceding year :—

	1864.	1863.
Contributories included in the list of contributories . . . . .	2,807	2,869
Contributories excluded in the list of contributories . . . . .	114	159
Debts claimed and adjudicated upon . . . . .	1,166	1,857
Orders made . . . . .	577	367
	£ s. d.	£ s. d.
The amount of calls made . . . . .	614,153 7 3	473,079 18 11
Dividends ordered to be paid to creditors . . . . .	440,820 5 1	313,183 4 11
Amount ordered to be refunded to contributories . . . . .	63,998 9 2	31,967 11 6
Realised by sales . . . . .	129,445 16 4	95,294 5 5

The receipts for the year were,—

	1864.	1863.
On calls or by way of compromise . . . . .	£115,744 13 9	£158,868 0 8
Assets realised . . . . .	367,015 13 0	262,920 3 11
The disbursements, including salaries or allowances, clerks' travelling expenses, &c., law expenses, auctioneers' and accountants' charges, and sundries, were . . . . .	40,292 17 7	44,225 5 7
Dividends paid to creditors . . . . .	363,276 3 4	253,049 13 7
Amount refunded to contributories . . . . .	53,894 10 7	28,977 15 0
Other payments . . . . .	20,578 4 10	21,580 12 11
A balance remained available for future distribution amounting to . . . . .	156,009 1 1	181,382 13 4

The proceedings in the office of the examiners of the High Court of Chancery for the year ended the 2nd November, 1864, are shewn in a return furnished by the sworn clerks as in former years. The number of witnesses examined was 419; the amount of fees received (by stamps) 2341. 5s. In the preceding year the number of witnesses examined was 338; the amount of fees was 2017. 5s.; the average of the number of witnesses examined for the five years 1859-63, inclusive, is 379; the average of the amount of fees for those years is 2371.

It will be remembered that in proceedings in Chancery the witnesses are not examined orally in court. Their evidence is taken down by the examiners and the examiners' returns shews simply the foregoing facts.

The return made by the Clerks of Records and Writs shews the proceedings in their office from the 2nd November, 1863, to the 1st November, 1864, both days inclusive. The return distinguishes the number of suits instituted in each of the four original courts of the Master of the Rolls and the three Vice-Chancellors, the total numbers under each head of proceedings being as follows for the year in comparison with the numbers for the preceding year, and with the average of the five years 1859-63, inclusive:—

	1864.	1863.	Average, 1859-63.
Suits instituted:			
Bills or informations filed . . . . .	2280	2344	2198
Claims filed under General Order of 1850 . . . . .	—	—	21
Special cases filed under the 14 Vict. c. 35 . . . . .	20	18	28
Administration summonses filed . . . . .	337	430	416
Carried forward . . . . .	2637	2792	2661

	1864.	1863.	Average, 1859-63.
In causes . . . . .	610	654	720
Under acts relating to railways, and other public works . . . . .	703	507	383
„ the Trustee Acts of 1850 and 1852 . . . . .	220	240	242
„ the Trustee Relief Acts, 1847 and 1849 . . . . .	232	241	234
„ the Leases and Sales of Settled Estates Act . . . . .	59	48	47
„ the acts relating to charities . . . . .	1	1	7
„ the Winding-up and Joint-stock Companies Acts . . . . .	33	23	18
„ the Infants Settlement Act, 1855 . . . . .	15	19	11
In other general matters . . . . .	276	268	203
	2149	2004	1865

Of the 2149 petitions in 1864, 21 were presented for hearing before the Lord Chancellor; 122 before the Lords Justices; 475 before Vice-Chancellor Kindersley; 790 before Vice-Chancellor Stuart; and 741 before Vice-Chancellor Wood. In 1864 there were also 15 petitions presented to the Lord Chancellor for orders of course; there were 10 letters missive, and 4 warrants. In the preceding year there were 16 petitions for orders of course presented to the Lord Chancellor, there were 10 letters missive, and 4 warrants. The average of the numbers under these heads for the five years 1859-63, inclusive, is respectively 13, 6, and 4. The amount of fees collected in the office

	1864.	1863.	Average, 1859-63.
Brought forward . . . . .	2637	2792	2661
Other originating summonses filed . . . . .	269	285	307
	2906	3077	2968

The total number of proceedings under the different classes of suits, and the total amount of fees collected by stamps in the office, were for each of the above years, with the average of five years, as follows:—

	1864.	1863.	Average, 1859-63.
Proceedings in suits by bill or information . . . . .	12,772	15,051	17,199
Proceedings in suits on claim . . . . .	—	1	66
Proceedings in suits on summonses . . . . .	1,007	941	1,054
Proceedings in special cases . . . . .	25	20	43
General proceedings . . . . .	54,797	50,740	50,626
	75,601	66,753	66,968

Fees collected in the office by stamps . . . . . £27,581 £26,186 £24,802

The return of the proceedings in the office of the Lord Chancellor's principal secretary, commencing with the 2nd November, 1863, and ending with the 1st November, 1864, furnished by the principal secretary, shews the number of attendable petitions presented for hearing within the year, with the nature of the proceedings, to have been as follows, the numbers under each description of proceedings for 1863, being added for comparison, with the average of the numbers for the five years 1859-63, inclusive:—

	1864.	1863.	Average, 1859-63.
In causes . . . . .	610	654	720
Under acts relating to railways, and other public works . . . . .	703	507	383
„ the Trustee Acts of 1850 and 1852 . . . . .	220	240	242
„ the Trustee Relief Acts, 1847 and 1849 . . . . .	232	241	234
„ the Leases and Sales of Settled Estates Act . . . . .	59	48	47
„ the acts relating to charities . . . . .	1	1	7
„ the Winding-up and Joint-stock Companies Acts . . . . .	33	23	18
„ the Infants Settlement Act, 1855 . . . . .	15	19	11
In other general matters . . . . .	276	268	203
	2149	2004	1865

by means of stamps, in 1864, was 15981; in the preceding year the amount was 15567. The average of the amounts for the five years is 14947.

The return of proceedings in the office of the secretary of the Rolls, furnished by the secretary of decrees, and commencing and ending at the same dates as the preceding return, shews the number of petitions set down for hearing, and the nature of the proceedings under the following headings. The numbers under each head are added for the preceding year, and the average of the numbers for the five years 1859-63, inclusive, viz.—

	1864.	1863.	Average 1859-63.
In causes . . . . .	288	308	348
In the acts relating to public charities . . . . .	5	151	87
In the Trustee Acts . . . . .	76	61	70
In the Trustee Relief Acts . . . . .	162	80	93
In the Leases and Sales of Settled Estates Acts . . . . .	18	45	20
In the acts relating to railways and other public works . . . . .	237	7	98
In the Winding-up and Joint-stock Companies Acts . . . . .	42	31	12
In the Infants Settlement Act, 18 & 19 Vict. c. 43 . . . . .	18	6	5
In other matters . . . . .	51	48	56
	827	758	748

The number of petitions presented for orders of course and orders of course drawn up, was 3645. In the preceding year the number was 2903; the average of the numbers for the five years 1859-63, inclusive, is 3451.

The total amount of fees collected in the office of the secretary at the Rolls, by stamps, as shewn in the return for 1864, the amounts collected at different rates on different proceedings being distinguished, was 2337.; for 1863 the amount was 1503.; the average of the five years is 2126.

The business transacted for which no fees are now payable, as shewn in the return for 1864, was as follows, the numbers under each head being also stated for each of the years 1861-2-3:—

	1864.	1863.	1862.	1861.
Caveats . . . . .	69	75	59	55
Docquets . . . . .	21	25	17	25
Recognisances vacated . . . . .	76	80	82	104
Fiats upon certificates of aliens . . . . .	333	261	261	271
Fiats upon deeds for enrolment . . . . .	30	38	33	14
Office copies . . . . .	157	173	148	137

The Taxing Masters' returns shew the proceedings in their respective offices for the year ended the 1st November, 1864, under the same heads as the returns for the preceding year. The following are the totals of the different proceedings, the details of each office being given in the tables:—

	Orders and Re- ferences for Taxation.	Bills Taxed.	Certificates and Allocations made.
General business . . . . .	2945	6257	2569
Taxation under the 6 & 7 Vict. c. 75, and under the Lands Clauses Consolidation Act, 1845 . . . . .	174	340	106
Taxations in lunacy . . . . .	292	509	274
Taxations under requests from officers of other courts . . . . .	89	104	72
Total proceedings . . . . .	3510	7210	3021

The total proceedings under each heading in 1863 were respectively, 3301, 7014, and 2852. The averages of the five years 1859-63, are 3335, 7117, and 2916. The total amount of costs taxed in 1864, as shewn in the table, was 756,130*l*. The amount in 1863 was 720,739*l*. The average of the five years 1859-63 is 727,739*l*. The amount of fees was 22,903*l*., as shewn in the table for 1864; for 1863 it was 21,817*l*.; the average for the five years is 23,165*l*.

The statistics of the duties performed in the office

of the Masters in Lunacy during the year, from the 2nd November, 1863, to the 1st November, 1864, inclusive, are shewn in a return furnished by the chief clerk to the Masters in Lunacy, in the same form as for preceding years, the following being the numbers of the proceedings under the different heads, with the amounts of cash and stock, as shewn in the return for 1864, with the corresponding numbers and amounts for the preceding year, and the average of the numbers and amounts for the five years, 1859-1863, inclusive:—

	1864.	1863.	Average, 1859-63.
Orders of inquiry in commissions of lunacy, executed by Mas- ters in Lunacy . . . . .	87	60	63
Reports made to the Lord Chancellor . . . . .	246	167	166
Bonds and recognisances taken as security for lunatics' estates . . . . .	107	85	87
Certificates as to such securities . . . . .	110	87	89
Certificates for investment of cash already in court belonging to lunatics . . . . .	4	5	6
Certificates for payment of money, transfer of stock into court, investment of cash in court, &c. . . . .	145	131	125
Amount of cash included in such certificates . . . . .	£212,558	£204,253	£181,282
Amount of stock included in such certificates . . . . .	12,931	15,589	11,990
Amount of cash already in court directed to be invested . . . . .	1,060	2,060	9,556
Certificates other than above . . . . .	79	74	79
Accounts and affidavits of committees and receivers of lunatics' estates taken and passed by the Masters . . . . .	258	255	251
Leases and other deeds settled and approved . . . . .	119	83	172
Summonses for proceedings before the Masters . . . . .	4,209	4,010	3,667
Amount of receipts in the accounts and affidavits of committees and receivers in lunacy passed during the year . . . . .	£470,443	£402,784	£364,535
Amount of disbursements and allowances therein . . . . .	385,812	344,794	314,137

The reports made to the Lord Chancellor by the Masters in Lunacy are stated in the return to com-  
prise, amongst other matters, reports as to the pro-  
perty, kindred, and maintenance of the lunatics and  
their families, and the appointment of committees of

their persons and estates; reports approving new com-  
mittees of person or estate; reports fixing anew, or in  
any way varying, the maintenance or residence of the  
lunatics; reports as to granting leases and providing  
for the repair of the lunatics' estates; reports on mis-

cellaneous matters. The certificates, other than as to securities, and the investment and payment of cash, relate to the deposit and delivery out of deeds, wills, and other documents, the approval and allowance of leases, deeds, and various other matters incidental to the management of lunatics' estates. The accounts and affidavits of committees and receivers taken and passed by the Masters are stated to be exclusive of cases in which the Masters have been satisfied as to the due application of the incomes of lunatics by other evidence or explanation.

The Registrar in Lunacy has furnished a return,

showing the proceedings in his office during the year ended the 1st November, 1864, in the same form as the returns for preceding years, with the addition of a heading for the number of orders made in pursuance of the Lunacy Regulation Act, 1862.

The proceedings and the amounts of cash and stock shewn in the return for 1864 are as follows, with the number of the proceedings under each head (except orders under the act of 1862), and the amounts for 1862; and with the average of the proceedings (except as before), and of the amounts for the years 1860-63, inclusive:—

	1864.	1863.	Average, 1860-63.
Petitions presented for hearing . . . . .	180	125	161
Orders made for inquiries in lieu of commissions of lunacy . . . . .	88	64	65
Other orders, including flats confirming Masters' reports . . . . .	347	289	286
Number of orders made in pursuance of the Lunacy Regulation Act, 1862, for the application of properties of small amount for the maintenance of lunatics . . . . .	23	—	—
Certificates of costs filed . . . . .	242	144	147
Certificates of the Masters in Lunacy filed . . . . .	353	316	290
Affidavits filed . . . . .	1045	816	869
Writs of superseas issued . . . . .	—	—	—
Amount of cash directed to be paid into court . . . . .	£37,169	£36,653	£42,908
ditto paid out . . . . .	27,359	28,236	31,017
Amount of stock directed to be transferred into court . . . . .	125,077	187,557	500,008
ditto sold and transferred out . . . . .	288,970	156,964	244,316
Amount of stock directed by orders in lunacy to be transferred otherwise than into court . . . . .	102,965	98,806	55,908

The registrar appends to his return the observation, that the amount of cash directed to be paid into court by the orders does not include the balances paid in by committees, nor any of the sums of money paid in by debtors, purchasers, and others, when the amounts are not mentioned in the orders, but have to be afterwards

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(To be continued).

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# THE JURIST.

LONDON, SEPTEMBER 30, 1865.

WE did not meet one of the county court judges in Switzerland. They were all, we presume, at home, or secluded in some quiet Welsh valley, imbibing the elements of equity. By a merciful dispensation, the Orders and Rules for regulating their equity practice have been kept back until they have had time to gain some notion of what they are to practise.

It will be remembered that the stat. 28 & 29 Vict. c. 99, gives to the county courts concurrent jurisdiction with the Court of Chancery in the following matters, and in those only:—

1. Suits by creditors, legatees, devisees, heirs, or next of kin in respect of an estate real, personal, or mixed, not exceeding 500*l.* in value.
2. Suits for the execution of trusts affecting an estate or fund not exceeding 500*l.* in value.
3. Suits to foreclose, redeem, or enforce a mortgage, charge, or lien for a sum not exceeding 500*l.*
4. Suits for enforcing or setting aside a contract for the sale of property not exceeding 500*l.* in value.
5. Proceedings under the Trustee Act, or the Trustees Relief Acts, in respect of an estate or fund not exceeding 500*l.* in value.
6. Proceedings relating to the advancement or maintenance of an infant, whose property does not exceed 500*l.* in value.
7. Suits for dissolving or winding up a partnership, the whole property, stock, and credits of which do not exceed 500*l.* in value.
8. The granting of relief, by way of injunction, in any of the above matters.

The jurisdiction of the Court of Chancery is not excluded, and the suitor's choice is left unfettered; but if he elect to proceed in a county court, the act lays down rules for ascertaining the particular court he must resort to.

The Orders and Rules have been framed by Messrs. J. B. Dasent, D. D. Heath, J. Worledge, R. A. Kettle, and W. Furner, the county court judges appointed for the purpose, and have been approved by the Lord Chancellor. They are brief and clear.

The principal provisions are as follows:—

The equivalent to a suit in Chancery is to be called a plaint in equity, and forms of plaints in the several matters to which the act extends are given, being, in fact, nearly identical with the common form of bills now used in Chancery practice.

The plaint may be filed by a plaintiff in person or by his attorney. It is not required to be printed, but as many copies as there are defendants to be brought before the Court, must be delivered to the registrar.

The defendants are to be brought before the Court by summons, to be served by the bailiff within seven days, or in the case of a defendant out of the jurisdiction, within such time, and in such manner, as the Court shall direct.

The summons is to be returnable not less than one

month, nor more than three months, after the filing of the plaint.

If the defendant, before the return day of the summons, signs an admission of the truth of the allegations in the plaint, and submits to the judgment of the Court, the plaintiff can only claim the costs then already incurred, and the further costs of attending and obtaining the decree or order to be made on such admission.

The defendant may, within eight days after the service of the summons, by writing, disclaim any interest, or deny any statement in the plaint, or raise any question of law on the statements in the plaint, without admitting the truth thereof, or aver new matter. With reference to this period of eight days, it is to be observed, that the Court has, under the 17th rule of the 28th Order, a general power to enlarge or abridge the prescribed term for taking any step.

The defendant may proceed in person, or by attorney.

The 3rd Order contains rules as to evidence, the admission and production of documents. Witnesses are in general to be examined orally, but affidavits may be used, upon notice, if not objected to; and, by order of the Court, witnesses within the jurisdiction of another court may be examined by the registrar of such other court.

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Provisions are made with respect to absent parties; the registrar's certificate; final decree; revivor and supplement; proceedings under the fifth, sixth, and eighth heads of jurisdiction above mentioned; ex parte applications; amendments; affidavits; rehearing; and enforcement of decrees and orders, which need not be abstracted here.

The 17th Order relates to funds in court. Money ordered to be paid into court is to be received by the treasurer, who is to give a receipt for it; and stock, shares, and other securities, directed to be received in court, are to be transferred into the names of the registrar and treasurer. Investments in Consols may be ordered in the names of the treasurer and registrar, either alone or jointly, with the name of the person immediately entitled to the interest of the fund. Sums under 30*l.* may be invested in the Post-office Savings Bank.

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The Rules appear to have been judiciously framed; and, so far as regards procedure, there is no reason to suppose that any difficulty will arise in respect of the new jurisdiction, provided the registrars are strict in enforcing the observance of the Rules, and courteous and considerate in explaining them to the suitors. But it is obvious that a suit in equity is a very different matter from a plaint to recover a debt; and in every case where a plaintiff or defendant thinks fit to dispense with the service of a solicitor, the registrar will almost of necessity have to perform the duties of a solicitor, or the proceedings will come to a dead lock; and we shall not be surprised, if in a short time it is found necessary to appoint a court solicitor, answering to the pauper's solicitor in bankruptcy, to advise and act for those suitors who have no other adviser. For though, in the case of a plaint for a debt or damages, it concerns no one but the party himself, whether he conducts the proceeding in a proper manner or not, it may be far otherwise in a matter of equitable jurisdiction, the due prosecution of which, when once it has been brought into court, may be as important to the defendant as to the plaintiff.

We have already pointed out, and need not now enlarge upon, the most important evil which will attend the new jurisdiction, by reason of the incompetence of the judges, and the absence of any efficient control from the Bar—we mean the want of uniformity of decisions, and the consequent impossibility of anticipating the decision of the Court upon any disputed point of law or construction. This is an evil necessarily incident to every jurisdiction limited in amount, and committed to many hands. It is an evil which, in the case of the county courts, has already been much and justly complained of, and which, when they undertake the solution of the many difficult and delicate questions involved in the new equitable jurisdiction, may be expected to increase tenfold. We fear it will be long before the only remedy is recognised and applied.

**LEGAL APPOINTMENTS.**—The Lord Chancellor has appointed Mr. George Lake Russell, of the equity bar, to be judge of the Bloomsbury County Court of Middlesex, in the place of Mr. D. D. Heath, resigned. The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas, at Westminster, has appointed John William Phillips, of the town of Haverfordwest, Gent., to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the town and county of the town of Haverfordwest, also in and for the county of Pembroke.

**SUDDEN DEATH.**—On Tuesday Henry Tennant, Esq., of 2, Blomfield-crescent, Upper Westbourne-place, was found on his couch quite dead. He was seventy years of age, and a Bench of Gray's Inn.

## INFRINGEMENT OF PATENT BY USER.

THE grant in letters-patent for an invention is, that the grantee, "his executors, administrators, and assigns, and every of them, by himself and themselves, or by his or their deputy or deputies, servants, or agents, or such others as he the said —, his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter, during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our United Kingdom, &c., in such manner as to him the said —, his executors, administrators, and assigns, shall in their or his discretion seem meet; and that he the said —, his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned."

The validity of this grant depends upon the exception in the Statute of Monopolies, 21 Jac. 1, c. 3, of "letters-patent and grants of privileges for the term of fourteen years or under, hereafter to be made, of the sole working and making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others, at the time of making such letters-patents and grants, shall not use, so as also they be not contrary to the law, nor mischievous to the State, by raising prices of commodities at home, or hurt of trade, or generally inconvenient."

In *Minter v. Williams* (4 Ad. & El. 251) the plaintiff, being entitled under letters-patent to the exclusive right to "make, use, exercise, and vend" his invention of an improved chair, brought an action against the defendant, alleging in his declaration that the defendant, without the plaintiff's license, *exposed to sale* articles in imitation of his invention. It was held, on demurrer, that the declaration was bad, on the ground that exposing to sale was not vending, and that the use of the word "vending" in the grant prevented the words "using and exercising" from including an attempt to vend.

In *Caldwell v. Vanderlissingen* (9 Hare, 415) the Court granted an injunction to restrain certain subjects of the King of Holland from using within British waters a screw propeller made in Holland according to the plaintiff's patent, which propeller was attached to a ship built and fitted up in Holland by subjects of that kingdom, wholly owned by Dutch subjects, and used in commerce between Holland and England. Sir G. J. Turner, V. C., seemed to have laid some stress on the difference between using an invention for the purposes of trade, and using it for any other purpose. It seems that the decision was affirmed by Lord Truro, but the decision is not reported.

In *Betts v. Neilson* (13 Weekly Rep. 805, 1028) Sir W. P. Wood, V. C., granted an interlocutory injunction to restrain the defendant from uttering or using in England any capsules (metallic envelopes for the mouths of corked bottles) made according to the plaintiff's patent, the case being that the defendant brought into England, for exportation abroad, bottles with their contents protected by the capsules in question, which bottles had been filled, corked, and covered with the capsules in Scotland, to which country the plaintiff's letters-patent did not extend. On appeal, the injunction was continued, the plaintiff undertaking to abide by any order of the Court as to damages, and to use due diligence in conducting the case to a hearing. Sir J. L. Knight Bruce, L. J., said, "It appears to me

that the capsules made according to this invention, though they came from Scotland, do rest for some time within England, and that such benefit as is derived from the invention is enjoyed by the owner of the liquid contained in the bottles in this country, during the time that they are here, although on their way to foreign parts, and not in such manner as to give immediate and practical benefit from the invention in this country. It appears to me that it is a benefit derived in this country from the invention. But I confess I do not come to that conclusion very willingly; and he added, that but for Mr. Rolt's and Sir Hugh Cairns' Acts, the course would have been to refrain from granting an injunction until the matter had been decided in an action.

We think that in both these cases the Court went very far beyond the limits of equitable jurisdiction. That in neither case would the plaintiff have succeeded at law seems to be clear, on principle, and on the authority of *Minter v. Williams*. The privilege granted by the letters-patent cannot extend beyond the scope of the exception in the Statute of Monopolies, for although in *Caldwell v. Vanderlissingen*, the Vice-Chancellor remarked that the statute did not create, but controlled, the power of the Crown in granting of patents, and that "patentees, therefore, have always derived, and still derive, their rights, not from the statute, but from the grant of the Crown," it is too late at the present day to contend that the Crown has any prerogative to restrain the free action of the subject in favour of an inventor, beyond the limits of the exception in the Statute of Monopolies. Now, that exception only speaks of "the sole working or making of any manner of new manufactures within this realm." There is not a word about using the manufactured article, and it is only upon a liberal construction of the exception that the sale within the realm of an article manufactured abroad according to the protected invention, is held to be an infringement. It is an infringement, because it interferes with the monopoly of manufacture for the purpose of sale within the realm, which the statute allows. But the mere use within the realm of an article made abroad cannot be an infringement of a patent right here, because it is not either the working or the making of a manufacture. The use in manufacture of an article made abroad according to the invention, would be an infringement, because the article then is in the nature of a tool; and the Crown may lawfully, within the exception in the statute, grant the exclusive use in manufacture of the tool, as well as the exclusive right to manufacture the tool. Therefore, one may lawfully purchase abroad, and use within the realm, otherwise than in manufacture, a watch, a chair, or any other article made according to an invention for the use of which there is a patent right within the realm; and one may use such an article in trade, provided the article is not itself sold or used in manufacture. Thus, one may use for one's trade a carriage having a patent axle. So, it is conceived, the Dutchmen, who, in the case stated above, used the patent propeller in trade, did not thereby use any process of manufacture, or in any way infringe any rights of manufacture, within the realm. And in the second case, the passive use in England, for the purposes of trade abroad, of an invention applied in Scotland, was in no sense a manufacture of the invention here, or an interference with the plaintiff's exclusive right to manufacture.

The consequences of the doctrine involved in the cases on which we are commenting would be most inconvenient. It very rarely, perhaps never, happens, that the exclusive right to use an invention is exercised by the same person or firm both in England and on the continent. And if a patented article made in

one country cannot be used in another, a foreigner visiting England, or an Englishman abroad, may be debarred from the use of half the equipments and articles of personal use that he carries with him.

Of course, we do not assert that a patented article may lawfully be made in this country for private use. The making of it, though not for profit, is a manufacture within the statute, and an injury to the patentee.

G. S.

## COUNTY COURT ORDERS AND FORMS IN EQUITY.

WE, JOHN BURY DASENT, DOUGLAS DENON HEATH, JOHN WORLEDGE, RUPERT ALFRED KETTLE, and WILLIAM FURNER, being County Court Judges appointed to frame Rules and Orders for regulating the Practice of the Courts, and Forms of Proceedings therein, under the 32nd section of the 19 & 20 Vict. c. 108, have, under the powers vested in us by the 28 & 29 Vict. c. 99, framed the following Rules, Orders, and Forms, and we do hereby certify the same to the Lord Chancellor accordingly.

### ORDER I.—SUITS.

#### *Plaint and Summons.*

1. All suits under the 1st, 2nd, 3rd, 4th, or 7th clauses of the 1st section of the act shall be commenced by filing a plaint in equity in the county court to which jurisdiction in the matter is given by the 10th section of the act.

2. Every plaint in equity shall state the name, address, and description of the plaintiff, and of the person intended to be brought before the court as defendant: and where any party sues or is sued in a representative character he shall be so described in the plaint; but this rule shall be subject to the 34th rule of the County Court Rules, 1857.

3. Every plaint in equity shall contain a concise statement of the grounds upon which the plaintiff seeks to obtain relief; and shall ask for the specific relief to which he conceives himself entitled, and also for general relief.

4. Where the plaint is filed by an attorney he shall indorse thereon his name or firm and place of business, and that the plaintiff sues by him as attorney; and where there is more than one plaintiff, and the plaint is not filed by an attorney, the plaintiff who actually files the same shall indorse thereon his name and address.

5. Plaints in equity may be in forms similar to those set out in the schedule to these Orders, with such variations as the nature and circumstances of each particular case may require.

6. The plaintiff or his attorney shall deliver at the office of the registrar the plaint, with as many copies thereof as there are persons to be brought before the court as defendants, and the registrar shall forthwith indorse on the plaint a memorandum of the day on which the same was received by him, and when such plaint shall be so indorsed it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

7. The registrar shall, on the filing of such plaint, make out a summons to the defendant, or to every defendant where there is more than one, to appear, and submit to the judgment of the court thereon.

8. The summons shall be in the form in the schedule, and be dated of the day on which the plaint was filed, and may be returnable at any court to be holden not less than one calendar month nor more than three calendar months from the filing thereof.

9. The summons, with a copy of the plaint annexed thereto, shall be issued by the registrar to the bailiff forthwith, who shall serve the same within seven days, and the service thereof shall be proved, in conformity with the present practice of the county courts; provided always, that the court may, upon facts duly verified by affidavit, allow substituted service where justice requires it.

10. Where a defendant shall be out of England, the judge, or in his absence the registrar, may, upon an affidavit of the fact, direct the service of the plaint and summons to be effected within such time and in such manner as the judge or registrar may think fit.

#### ORDER II.—SUITS.

##### *Proceedings after Service.*

1. Where any defendant desires to admit the truth of the allegations in the plaint, and to submit to the judgment of the court, he may, at any time before the return day of the original summons, in the presence of a registrar of a county court, or in the presence of one of his clerks, or of an attorney of one of the superior courts, sign an admission in the form contained in the schedule to these Orders; and the signature of the defendant thereto shall be verified by affidavit, unless signed in the presence of the registrar of the court in which the suit is, or of one of his clerks.

2. The admission shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or, where the plaint is filed by an attorney, with a copy for such attorney only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff, or the attorney, as the case may be, and after the receipt of such copy the plaintiff shall be entitled to the costs then already incurred, and to the further costs of attending the court and obtaining the decree or order to be made upon such admission, but to no other costs.

3. The defendant may, within eight days after the service of the summons, by a statement in writing signed by him, disclaim any interest in the subject-matter of the suit, or admit or deny any of the statements in the plaint, or raise any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence at the hearing, or which he thinks advisable to bring to the notice of the court: provided always, that in exercising his discretion as to costs, the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule.

4. The statement under the last foregoing rule shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or where the plaint is filed by attorney, with a copy for such attorney only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff or the attorney, as the case may be.

5. Where the statement is filed by an attorney, he shall indorse thereon his name or firm and place of business, and that the defendant defends by him; and where it is not filed by an attorney, the defendant who actually files the same shall indorse thereon his name and address.

6. The plaintiff may at any time before setting down the cause for hearing, by notice in writing delivered at the office of the registrar, require the plaint to be dismissed as against all or any of the defendants, with costs, without prejudice to further proceedings or suits, and such notice shall operate as an order to dismiss accordingly; and the registrar shall forthwith file such notice, and forward a copy thereof by post or otherwise to each of the defendants.

#### ORDER III.—SUITS.

##### *Evidence.*

1. Except where otherwise provided by these Orders, the evidence of witnesses shall be taken *vivâ voce*, on oath, according to the present practice on the hearing of plaints.

2. Where a party desires to give in evidence any document, he may, not less than five days before the hearing, give notice to any other party in the cause who is competent to make admissions, requiring him to inspect and admit such document; and if such other party shall not within a reasonable time make such admission, any expense of proving the same at the hearing shall be paid by him, whatever be the result of the cause, unless the court shall otherwise order; and no costs of proving any document shall be allowed unless such notice be given, except in cases where, in the opinion of the registrar, the omission to give such notice has been a saving of expense.

3. Where a party desires to inspect any document in the possession or under the control of any other party, he may, five days before the hearing, give notice to such other party that he or his attorney desires to inspect the same at any place to be appointed by such other party; and if such other party shall not appoint a convenient place, or allow the party giving such notice, or his attorney, to inspect such document within three days after receiving such notice, the judge may adjourn the hearing, and make such order as to costs as he shall think fit.

4. Where a party requires the attendance of any other party, or of any witness, either to give evidence or to produce documents, he shall apply to the registrar to issue a summons requiring such other party or witness to attend the court or the registrar, as the case may be, or to attend and produce documents; and such summonses shall respectively be drawn up by the registrar, and be issued by him to the bailiff, who shall serve the same; and in every summons to produce documents the registrar shall insert a description of the documents required.

5. Where a party served with a summons under the last rule shall not at the hearing produce the documents required, the court may, upon admission or proof of the service of such summons within a reasonable time, and that such documents are in the possession of the party so served, and that they relate to the matter then pending before the court, make an order for their production by him, and the court may deal with them, when so produced, and with all costs occasioned by their non-production, as may appear just: provided that nothing herein shall prevent the court from receiving secondary evidence of any document of which notice to produce has been given.

6. Where any documents are produced to the court from proper custody, they shall be read without further proof, if they appear genuine, and if no objection be taken thereto; and if the admission of any document so produced be objected to, the judge may adjourn the hearing, and the party objecting shall pay the costs caused by such objection, in case the same shall afterwards be proved, unless the judge shall otherwise order.

7. Where a party desires to use at the hearing an affidavit by any particular witness, or an affidavit as to particular facts, he may, ten days before the hearing, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party shall within five days give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof.

8. Where it shall be necessary to examine a witness

de bene esse, application upon affidavit shall be made to the judge to appoint an examiner for that purpose.

9. Upon the application of a party desirous to examine a witness residing out of the jurisdiction of the court, the judge may, if he thinks fit, appoint the registrar of the court within the district of which such witness resides to take the examination of such witness.

10. Where any witness is examined by a registrar, he shall be examined on oath, and the registrar shall transcribe the answers of such witness, and the deposition shall be subscribed by the witness and the registrar who shall have so examined him, and shall then be transmitted by post to the registrar of the court in which the suit or proceeding is pending.

11. The allowance to be made to witnesses for attendance either before the court or registrar shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule.

#### ORDER IV.—SUITS.

##### *Hearing.*

1. Upon the day on which the summons is returnable all parties shall come to the court prepared, so far as the nature of the case will admit, with evidence to enable the judge to try the whole matter of the suit upon the merits, and then to determine the same by a final decree, or to make such decretal order, or give such directions for adding parties to the suit, for making inquiries, taking accounts, realising assets, or doing any act which the judge may consider necessary to enable him to make a final decree upon a day to which the hearing may be adjourned.

2. A suit in equity shall be heard in open court, as plaints in the county court are now tried.

3. Affidavits and depositions used at the hearing shall be read as the evidence of the person by whom they are used.

4. Upon the hearing, the court may dismiss the suit, or grant the relief asked by the plaintiff, or any part thereof, or may grant any other relief consistent with the case made by the plaintiff, or make any order giving directions for, or with respect to, the prosecution of the suit, as the circumstances of the case may require, and also make such order as to costs as the court may think fit.

5. Where the court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the court shall adjourn the hearing, and appoint a day for the trial of such question by a jury; and thereupon the practice shall be in all respects the same as that under the County Court Acts and rules now in force, in cases where either party has required a jury, including the power to direct a new trial when necessary.

6. Where the court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the judge shall reduce the question into writing, and the same shall be called the "record for trial."

#### ORDER V.—SUITS.

##### *Decretal Orders.*

1. Where the court makes any decretal order, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order.

2. Where a decretal order directs any deed to be prepared and executed, it shall state by what party the said deed shall be prepared, and to whom it shall be submitted for approval.

3. Where, upon the hearing, it appears to the court expedient that a receiver be appointed, such appointment shall be made by the decretal order, whether the same be asked as part of the relief in the plaintiff or not.

4. Where real property is ordered to be sold, the decretal order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, shall be prepared. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, it shall name the counsel to whom they are to be submitted.

5. Where a decretal order directs any personal property to be sold, the same shall be sold, under the superintendence of the high bailiff, by public auction, unless the court shall otherwise order.

6. Where any decretal order directs any accounts or inquiries to be taken or made, or any acts to be done, by the registrar, high bailiff, receiver, or parties, it shall name a day within which all such acts shall be done, and accounts and inquiries completed, and shall also name a day, not less than fourteen days after that day, on which the registrar shall certify the result of the accounts and inquiries, and what has been done under such decretal order, and on which the cause will be further heard, and, if practicable, a final decree made.

#### ORDER VI.—EXECUTION OF DECRETAL ORDERS.

1. Where a deed is ordered to be prepared, and the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel, by whom the same shall be settled, subject to the final approval of the judge.

2. Where a decretal order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar, and he shall for that purpose have all the powers, and discharge all the duties, of a chief clerk of the Master of the Rolls, or a Vice-Chancellor in the Court of Chancery; and all parties prosecuting any such accounts or inquiries shall have the same power of summoning witnesses, including as witnesses any parties in the cause, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they had on the original hearing; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the hearing, shall be applicable (as far as may be) to such summoning, swearing, examining, and production, on taking any such accounts, or prosecuting any such inquiries.

3. Where a decretal order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept, shall, unless the judge shall otherwise direct, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

4. Every advertisement for creditors or other persons having any claim upon, or interest in, the distribution of any assets to be administered by the court, which shall be issued pursuant to any decretal order, shall direct every such creditor or other person, by a time, to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security, if any, held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

5. No such creditor or other person need make any affidavit, or attend in support of his claim, unless he is served with a notice requiring him to do so, as hereinafter provided.

6. Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on

the claims; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office, at such time as shall be specified in such notice.

7. Every person claiming as heir-at-law, devisee, next of kin, or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified.

8. In case any creditor or other person shall neglect or refuse to comply with the last two preceding rules, he shall not be allowed any costs of proving his claim, unless the registrar shall otherwise direct.

9. At the time appointed for adjudication upon the debts or claims, the registrar shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discretion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

10. Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every such creditor or other person as he shall think fit, to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any such creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

11. Any such creditor or other person who has not before sent in the particulars of his claim, pursuant to the advertisement, may do so two days previous to any day to which the adjudication is adjourned.

12. If any claim be sent in after the time fixed by the advertisement (except as before provided in case of an adjournment), the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he thinks fit.

13. In taking any account directed by any decretal order, all just allowances shall be made, without any directions for that purpose in such order.

14. Where the registrar, high bailiff, receiver, or any party has, by any decretal order, been directed to do any act, for doing which it may be found necessary to have further directions, or an order of the court, the registrar shall apply to the judge for such direction or order, and upon such application the judge may give such direction or make such order as he may think fit, or may appoint a time to hear all parties, upon the application so made by the registrar; and if the judge shall make such appointment for hearing, the same shall operate as a stay of proceedings in the suit until the day so appointed, if he shall so direct.

#### ORDER VII.—SUITS.

##### *Absent Parties.*

1. Where any matter is referred to the registrar by a decretal order, he shall, as soon as conveniently may be, ascertain if there are any parties who, if the de-

cretal order had been made in a suit pending in the Court of Chancery, ought, under the 42nd section of the 15 & 16 Vict. c. 86, to be served with a notice under rule 8 of such section.

2. Where it shall be necessary to serve any parties with the notice mentioned in the foregoing rule, the same shall be prepared by the registrar, and issued by him to the bailiff, who shall serve the same, and upon such notice the party served therewith may attend the proceedings under the decretal order.

3. Any party who shall be served with a notice under the last foregoing rule, may apply to the court at the next sitting, or, by leave of the judge at any subsequent sitting, to vary or add to the decretal order.

#### ORDER VIII.—SUITS.

##### *Registrar's Certificate.*

1. Where a registrar has been ordered to certify to the court upon any matter, he shall present to the court a certificate in writing signed by him.

2. The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice to all parties to the suit that the same lies in his office for the inspection of any party interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy.

3. Where any party interested in, or affected by, the registrar's certificate, desires to have the same varied, he shall apply by himself, his counsel or attorney, at the court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon as he may think fit.

4. If no application shall be made to vary the certificate, it shall be taken as confirmed, unless the judge shall otherwise order.

#### ORDER IX.—SUITS.

##### *Final Decree.*

1. When the court has determined all the questions raised between the parties, the registrar shall, as soon thereafter as conveniently may be, draw up a final decree in accordance with the judgment of the court, and seal and file the same.

#### ORDER X.—SUITS.

##### *Revivor and Supplement.*

1. Upon any suit becoming abated by death, marriage, or otherwise, or defective in consequence of any change or transmission of interest or liability, the judge shall, on application of any person having a right so to apply, make an order reviving the said suit, or such supplementary decree or order as may have become necessary in consequence of any such matters as aforesaid.

2. An order under the foregoing rule shall be drawn up by the registrar, and sealed with the seal of the court, and issued to the bailiff, who shall serve the same upon such person or persons as the court shall direct.

3. After service of such order, the suit shall, as between the party by whom the order has been obtained and the party on whom it has been served, be in the same plight and condition as it was in before it had become abated or defective as aforesaid; provided that the person so served may move the court at the next sitting, or, by leave of the judge at any subsequent sitting, to discharge such order, and such motion shall be made upon affidavit of the facts relied upon to support the same.



**ORDER XI.—PROCEEDINGS UNDER THE 5TH, 6TH, AND 8TH CLAUSES OF THE 1ST SECTION.**

1. All proceedings under the 5th and 6th clauses of the 1st section of the act shall be by petition, and such petition need not shew title except so far as is provided by the rules in this Order.

2. Where a trustee petitions under the said 5th clause for an order in any matter relating to the trust, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are persons beneficially interested in the due execution of the trust, and he shall state in such petition his own name, address, and description, and also the names, addresses, and descriptions of the persons beneficially interested, so far as he is able, and the nature of the trust, and how created, the property or money to which the same relates, and the substance of the order which he seeks to obtain.

3. Where any guardian or trustee of any infant petitions for an order relating to the maintenance or advancement of such infant, he shall file his petition at the office of the registrar, and where any person, as next friend of an infant, petitions on behalf of such infant for an order upon or against the guardian or trustee of such infant, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are guardians or trustees. And in such petition shall be stated the names, addresses, and descriptions of the petitioner, and of all the persons to whom such order is intended to relate, and shall also state the nature of the guardianship or trust, and how created, of the property to which the trust relates, and the substance of the order which the petitioner seeks to obtain.

4. Where any person intends to apply under the 8th clause of the 1st section of the act, for an order in the nature of an injunction (except as is provided in Order XII for urgent cases), he shall deliver at the office of the registrar a notice of his intention to apply for the same, together with as many copies thereof as there are persons upon or against whom such order is intended to be obtained, and he shall state in such notice his own name, address, and description, and, so far as he can, the names, addresses, and descriptions of all such persons, and also the substance of the order which the petitioner seeks to obtain.

5. Under this Order petitions shall be filed and notices shall be delivered at the office of the registrar seven days before the sitting of the court at which the petition is to be heard or application made.

6. The registrar, upon receiving any such petition or notice and the copies thereof, shall issue the copies under the seal of the court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself, and under the seal of the court, informing them of the day and hour on which the petition or application will be heard, and that if they do not attend, either in person or by their attorneys, such order will be made and proceedings taken as the judge may think just and expedient.

7. The bailiff of the court shall, four days at least before the hearing, serve all copies of such petitions and notices.

8. Upon the hearing of any petition or application under this Order, unless the judge shall otherwise direct, the facts relied upon in support of or in opposition to such petition or application shall be proved by affidavit.

9. Where the judge makes an order upon such petition or application, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order.

10. The preceding Orders relating to suits shall, in

all cases where they are applicable, be construed as extending to proceedings under this Order.

**ORDER XII.—SUITS AND PROCEEDINGS.***Ex parte Applications.*

1. Wherever in any suit or proceeding it shall become necessary to secure the possession of any property, or to obtain security from any person for any moneys in his possession, or to enforce the deposit or the payment into court thereof pending litigation, or the immediate sale of any goods or chattels, and the deposit or payment into court of the purchase money thereof, or to obtain an order in the nature of an injunction, any party may apply *ex parte* to the judge, either in or out of court, upon affidavits setting forth the facts rendering such order immediately necessary, and upon such application the judge may either make an order absolute in the first instance, or make an order to be absolute at any time to be ordered by him, unless cause be shewn to the contrary, or may make such other order or give such directions in the matter as the judge may think fit, and may order immediate execution.

2. The draft of all orders under the foregoing rule shall be prepared beforehand by the registrar of the court in which such suit or proceeding is pending, and shall be presented by the party when he makes such application to the judge to settle and sign.

3. The draft so signed shall be transmitted by the applicant to the registrar of the court in which the suit or proceeding is pending, who shall draw up the order in conformity therewith, and seal and file the same, and issue a copy thereof, under the seal of the court, to the bailiff for service, and execution shall be issued thereon, as by the order is directed.

**ORDER XIII.—SUITS AND PROCEEDINGS.***Amendments.*

1. The judge may, at or during the hearing, and before a final decree or order made in any suit or proceeding under the act, exercise all powers of amendment mentioned in the 57th section of the stat. 19 & 20 Vict. c. 108, so far as the same may be applicable to suits and proceedings in equity, and also all the powers and authorities of a judge of the High Court of Chancery; and the County Court Rules, 1857, which are numbered respectively 91, 92, 93, 94, 95, 96, 97, 98, 99, and 100, shall apply, so far as they are applicable, to all suits and proceedings under this act.

**ORDER XIV.—SUITS AND PROCEEDINGS.***Affidavits.*

1. All affidavits shall be expressed in the first person of the deponent.

2. All affidavits shall state the deponent's age, occupation, quality, and place of residence, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to, or believed by him, by reason of information derived from other sources than his own knowledge, and what such sources are.

3. The costs of affidavits not in conformity with the last two preceding rules shall be disallowed on taxation, unless the court shall otherwise direct.

4. Before any affidavit is used, it shall be filed in the office of the registrar.

5. No affidavit in which there is any knife erasure, or which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, nor any affidavit in which there is any interlineation, unless the person before whom the same is sworn shall have duly authenticated such interli-



neation with his initials, in such manner as to shew that such interlineation was made before it was sworn, shall be filed or used in any suit or proceeding.

#### ORDER XV.—SUITS AND PROCEEDINGS.

##### *Rehearing.*

1. No decree or order once made shall be reheard, unless in any case in which the judge, on special grounds, shall think such rehearing necessary, and then only on such terms as the judge may think just.

#### ORDER XVI.—SUITS AND PROCEEDINGS.

##### *Enforcement of Decrees and Orders.*

1. On the application of the party entitled to the benefit of the decree or order, the registrar shall issue to the bailiff a copy of such decree or order, under the seal of the court, with a notice to the party to be bound indorsed thereon; and the bailiff shall forthwith serve the same upon the party to whom such notice is addressed.

2. No process shall issue to enforce any decree or order, unless by leave of the judge, until three days after a copy thereof, under the seal of the court, shall have been served upon the party to be bound thereby.

3. Where any decree or order is made for the payment of money into court, or by one party to another, the registrar shall, after the expiration of the time, if any, appointed by the decree or order for the payment thereof, and after the expiration of the time limited by this order, upon application by the person having the conduct of the suit, or by the payee, issue to the bailiff of the court a writ of fieri facias as a warrant of execution, as provided by sect. 94 of the 9 & 10 Vict. c. 95.

4. Where, by a decree or order made in any suit or proceeding for the delivery up to any person of lands or tenements, goods or chattels, either as owner thereof, or to be sold, or to be held in possession until an order is made as to the disposition thereof, the registrar shall, upon the application of the person entitled to such possession, issue to the bailiff either a warrant of possession, or warrant of assistance, as the case may require.

#### ORDER XVII.—FUNDS IN COURT.

1. All moneys ordered to be paid into court shall be received by the registrar, and the duties of the registrar and the treasurer with respect to such moneys shall be in all respects the same as if the moneys received under the act had been received under the authority of the County Court Acts now in force; and all instructions issued, or to be issued, by the Lords Commissioners of her Majesty's Treasury, shall apply to moneys received under the act, unless therein otherwise directed.

2. Where money is directed to be paid into court, the party directed shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and in case of stock, shares, or other securities, a transfer shall be made into the names of the registrar and treasurer of the court, less the broker's account and charges, and the certificate of transfer, together with such accounts, shall be filed in the office of the registrar, who, with the treasurer, shall hold such moneys, stocks, shares, or securities, in trust to attend the order of the court.

3. Where any party to a suit or proceeding is desirous of having any fund in court in which he is interested, or any part thereof, invested, the court may at any time order the investment thereof; and such funds may be invested in the purchase of 3½ per Cent. Consolidated Annuities, in the names of the

treasurer and registrar of the court for the time being, with or without the name of the person (if any) found or declared by the court to be immediately entitled to the interest of the fund, and the court may further order that the person (if any) so entitled shall from time to time receive the dividends thereof.

4. Where the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall reinvest the dividend in the same names, except where and so far as the court shall otherwise direct, and shall apportion the amount so reinvested in his books to the right accounts.

5. Where the sum to be invested in any case in the same interest does not exceed 30£ in one year, the same may, if the judge think fit, be deposited in the Post-office Savings Bank, in the name of the registrar for the time being, in trust for the parties interested therein, and in such case the person (if any) entitled to the interest on such sum shall be allowed to receive the annual addition made to the same by way of interest, on such certificate or authority from the registrar as the Postmaster-General may from time to time require.

6. Where any order has been made upon any person to pay to the Accountant-General in Chancery any sum of money under sect. 5 of the act, such order shall be drawn up by the registrar and issued to the bailiff of the court, by whom the same shall be served personally upon the person ordered to make the payment.

7. Where default shall be made in the production of the certificate of the Accountant-General, the registrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with sect. 5 of the act.

8. Where any married woman is interested in any principal money, stocks, shares, or securities, exceeding in value 200£, or 10£ in annual payments, she shall be examined by the judge, apart from her husband, to ascertain whether the same shall be paid to him or made the subject-matter of a settlement; but if she be under age, the court shall order a proper settlement to be made.

#### ORDER XVIII.—TRANSFER OF PROCEEDINGS TO COURT OF CHANCERY.

1. If during the progress of any inquiry under order of the court it shall be made to appear that the subject-matter of the suit or proceeding exceeds the amount to which the jurisdiction of the court is limited, the registrar may proceed with the particular account or inquiry which is then before him, unless he thinks it inexpedient so to do; but he shall at the next sitting of the court present a certificate of the state of the suit and proceedings, and if the judge shall be of opinion that such excess exists, he shall make an order for the transfer of the suit or matter to the Court of Chancery; and the registrar shall make and file with the record a copy of such certificate and order, and shall transmit the original, together with the order of the judge thereon, under the seal of the court, by post or otherwise, to the office of the Clerk of Records and Writs in Chancery, or to such other office or officer as the Lord Chancellor may by General Order direct, and shall also send notice, by post or otherwise, of the fact to all parties and persons entitled to be served with a copy of the decree.

#### ORDER XIX.—APPEAL.

1. Where any party desires to appeal, under sect. 18 of the act, against the determination or direction of a judge of a county court, such appeal shall be had in

accordance with the provisions of sect. 15 of the 13 & 14 Vict. c. 61, upon a case to be stated for the opinion of the Vice-Chancellor appointed in that behalf by the Lord Chancellor.

2. The notice of appeal shall be in writing, and shall be signed by the appellant, his counsel or attorney, and such notice shall be sent, together with the statement of the grounds, by post or otherwise, to the registrar, as well as to the successful party.

3. The pendency of an appeal shall not operate as a stay of proceedings, but the Vice-Chancellor to whom such appeal is made, or the judge from whose decree or order the appeal is made, may stay the proceedings pending the appeal, on such terms as to giving security or otherwise as to such Vice-Chancellor or judge may seem fit.

4. The appellant shall prepare the case for appeal, and all cases on appeal shall, unless the judge shall otherwise order, be presented to him for signature at the court held next after the parties shall have agreed upon the same; and if the judge approves thereof, it shall be signed by him, and sealed with the seal of the court; but where the judge does not approve of the case submitted to him, both parties shall be summoned to attend him where and when the judge shall appoint; and at the place and time so appointed both parties shall be heard as to the form of the case, and the judge shall finally settle and sign the same, and it shall then be sealed by the registrar.

5. Where the parties do not agree upon the form of the case to be stated, the appellant shall lodge with the registrar the draft case prepared by him, and the registrar shall give notice to the parties that the same has been so lodged, and will, on a day to be named in the notice, be presented to the judge for his signature, and on such day the parties may appear before the judge, who shall determine the form of the case, and finally settle and sign the same, and it shall then be sealed by the registrar.

6. When the case shall be so signed and sealed, a copy thereof shall be deposited with the registrar, and another sent by post or otherwise by the appellant to the successful party within three clear days next after the time of signing and sealing the same; and if the appellant do not comply with this rule, the successful party may proceed upon the decree or order, unless the judge shall otherwise direct.

7. The appellant shall, within three clear days next after the case has been signed and sealed, transmit the same with a copy thereof under the seal of the court, by post or otherwise, to the office of the Clerks of Records and Writs in Chancery, or to such other office or officer in the court as the Lord Chancellor may by General Order direct, and shall give notice, by post or otherwise, to the successful party that he has done so; in default whereof the successful party may proceed on the decree or order, and shall, on the application to the court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings; provided that, instead of proceeding on such decree or order, the respondent, if he think fit, may, within twenty-eight days from the signing and sealing of the case, transmit it in the manner prescribed, and give the like notice to the appellant of such transmission.

8. If, after the case has been transmitted, the appellant do not prosecute his appeal, the Court of Appeal may dismiss the same for want of prosecution, and thereupon the decree or order appealed from may be prosecuted and enforced as if there had been no such appeal, and the respondent in the appeal shall be entitled to all costs he may have incurred by reason of the appeal, to be recovered as costs in the court below.

9. When the Court of Appeal shall have made a decree or order, either party may deposit the same, or an office copy thereof, with the registrar of the county court, and upon being so deposited, such decree or order shall be filed, and may be enforced as if it had been made by the county court.

10. All the rules in this Order shall apply to appeals under sect. 19 of the act to the Court of Chancery of the County Palatine of Lancaster, and the Vice-Chancellor thereof, except that the case when signed and sealed shall be transmitted to the registrar of that court.

#### ORDER XX.—DUTIES OF REGISTRAR.

1. The registrar shall keep a book, to be called "The Suits and Proceedings in Equity Book," and shall enter and number in such book each suit or proceeding consecutively in the order in which they are entered, and shall also enter therein a note of all documents filed and steps taken in such suit or proceeding.

2. Upon the filing of any document it shall be distinguished by the number of the plaint or petition in respect of which it is filed being indorsed thereon, and it shall be further distinguished from other documents filed in the suit or proceeding by placing after the number a distinctive letter of the alphabet.

3. Where a registrar rejects an affidavit under Order XIV, he shall give notice, by post or otherwise, to the party offering the same for filing, of and the reasons for such rejection; and where any other document is so imperfect upon the face thereof, or by reason of having blanks therein, that it cannot be easily read or understood, the registrar may refuse to file, and may return the same by post, or otherwise, to the party offering the same, to be rewritten, or the blanks filled up.

4. Before any summons, notice, or other document, or any copy thereof, shall be issued by the registrar, the same shall be sealed with the seal of the court.

5. Where the registrar is required by any decretal order to make inquiries or to take accounts, he shall appoint some day, being not less than twenty-one days from the date of such order, to sit in his office or at the court to hear and determine all matters relating to such inquiry and accounts, and he shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of such sitting, and shall insert the same fourteen days previous to such sitting.

6. Upon the day so appointed the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or attorneys.

7. Where a registrar is not prepared to certify to the court on the day mentioned in the order, he shall apply to the judge for an extension of time, and state the reason for making the application, and he shall give notice, by post or otherwise, to the parties of the enlargement of the time and of the day on which he is to certify.

8. Whenever a notice for appeal is given, the registrar shall detain the proceeds of any execution which may then be in, or may come into, his hands pending such appeal, to abide the event of such appeal, unless the judge shall otherwise order.

#### ORDER XXI.—DUTIES OF HIGH BAILIFF.

1. Where any personal property is directed to be sold by auction, the high bailiff shall superintend the sale; and where the property is to be sold by private contract, he shall carry out the directions of the court in respect of such sale.

2. The high bailiff shall serve all documents issued

to him by the registrar for service, and execute all warrants.

3. Where a warrant shall direct the high bailiff to take possession of, without selling or delivering to a party, any goods or chattels, he shall make, or cause to be made, an inventory or appraisal of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisal, or sufficient security, to be approved by the registrar, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be redelivered to him, or held to abide the order of the court.

4. All moneys coming into the hands of the high bailiff shall be paid over by him to the registrar to the credit of the suit or proceeding in which the same was so received by him within twenty-four hours after he shall have received the same.

#### ORDER XXII.—DUTIES OF RECEIVER.

1. Every receiver appointed by the court, other than the high bailiff, shall give such security by bond to the registrar for the faithful discharge of his duties, and the payment over of money, as the court shall direct.

2. The receiver shall submit to the registrar, and the registrar shall audit, the accounts of the receiver, which need not be in any particular form, as soon as conveniently may be after the receipt or realisation of the assets, and immediately after such audit shall pay over to the registrar the balance found thereby to be in his hands.

3. The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the accounts, and may disallow any item not proved to his satisfaction, and may, if he shall think fit, require any receiver to verify such accounts and vouchers upon oath.

4. The receiver shall, at any time before the complete realisation of the assets, produce his accounts to be audited in manner provided by this Order, upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver.

5. Where the duties of the receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit.

6. In no case shall it be necessary for any party to attend at the audit of the receiver's account, but where a party is dissatisfied with a receiver's account, he may apply to the court or registrar for a revision of the registrar's allowances.

7. The court may order the receiver to pay over, at such time, or from time to time, as it shall see fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest, instead of paying the same into court, and to take credit for such payments in his accounts when audited.

#### ORDER XXIII.—PRACTICE.

1. All complaints, petitions, statements, and documents whatsoever in any suits or matter under the act which are required to be filed shall be on foolscap paper, and may be wholly or partly printed or written, and dates and sums occurring therein may be expressed in figures.

2. All judicial or official documents in any suit or proceeding, and all copies thereof respectively issued by the court, shall be stamped by the registrar with the seal of the court.

3. Every document, the mode of serving which is not specially defined by these Orders, may be served, and the service thereof may be proved, in conformity

with the practice that has heretofore prevailed in the county courts as to the service of summonses, excepting so far as the same relates to the time of service.

4. Where any party to a suit or proceeding changes his attorney, he shall give notice in writing of such change to the registrar, stating the name or firm and place of business of the new attorney, and the registrar shall file the notice.

5. No suit or motion for a decree or decretal order shall be heard until the same shall be set down for hearing.

6. The times of the sitting of a county court in matters of equity shall be those appointed for the transaction of the general business of the court, unless the judge shall otherwise order, and shall appoint a special day or days for the sitting of the court in matters of equity.

7. Where any party to any suit or proceeding is unacquainted with the Christian name of any person whose name he desires to insert in any plaint, proceeding, or document, he may describe such person by his surname, or by his surname and the initial of his Christian name, or by such name as he is generally known by.

8. Where any proceedings or documents are filed, an extra copy, in addition to the copies to be delivered under these Orders, shall be left with the registrar for the use of the judge.

9. The registrar shall transmit by post, prepaid, to the judge, five days before the sitting of the court, all copies of proceedings and documents left for his use under these Orders.

10. Copies of all proceedings or documents shall be prepared by the registrar for any person requiring the same, upon payment of the costs of such copies when the order for the same is given.

11. Where, by these Orders, any act is to be, or may be, done by any party to a suit or proceeding, such act may be done either in person or by his attorney.

12. Where a party acts by attorney, service of any proceeding or document upon such attorney, or delivery of the same at his office, or sending the same to him by post, shall be good service upon the party for whom such attorney acts, as upon the day when the same is so served or delivered, or upon which, in the ordinary course of post, it would be delivered, except in cases where, by these Orders, personal service upon a party is required.

13. Any proceeding or document may, by leave of the registrar, be served by the attorney of the party requiring to effect such service; but the costs of such service, and proof thereof, shall not be allowed, except by order of the judge.

14. Where, by reason of the absence of any party, or from any other sufficient cause, the service of any summons, notice, proceeding, or document cannot be made, or ought, in the opinion of the judge, to be dispensed with, the judge may wholly dispense with such service, or may, at his discretion, order any substituted service, or notice by advertisement or otherwise, in lieu of such service.

15. The judge shall order in what newspaper any advertisements which may from time to time be ordered in any suit or proceeding shall be inserted; and when there is no fund in court, the expense of such advertisements shall be paid to the registrar by the party requiring the same, before they are inserted.

16. All advertisements to be inserted in the London Gazette shall be transmitted to the registrar of county court judgments in London, who shall cause them to be classified and inserted in lists, under the direction of the Commissioners of her Majesty's Treasury.

17. The judge may order what party shall have

the conduct of any suit or proceeding, or any part thereof, and may rescind or alter such order, or make new orders in that behalf from time to time, as he shall think fit.

18. The judge may, if he think fit, enlarge or abridge any of the times fixed by these Orders for taking any step, or filing any document, or giving any notice, in any suit or proceeding.

19. Before the name of any person shall be used in any suit or proceeding as next friend of any infant, married woman, or other party, such person shall sign an undertaking, in the form given in the schedule, to be responsible for any costs to which the plaintiff or applicant may become liable in the course of the suit or proceeding, and such undertaking shall be annexed by the registrar to the plaint or petition.

20. Where suits or proceedings shall be commenced in different courts by parties in the same interest, such suits or proceedings shall be transferred to the court in which the first plaint or petition was filed, and shall there be proceeded with, in the same way in all respects, as if they had been commenced in that court.

21. The registrar shall be the taxing officer of the court.

22. Creditors are to be entitled to interest in respect of debts, as to such of them as carry interest, after the rate they respectively carry, and as to all others, after the rate of 4l. per cent. per annum, from the date of the decretal order, and to costs of successfully proving such debts, according to the scale of costs in that behalf.

23. Interest is to be computed on legacies after the rate of 4l. per cent. per annum, from the end of one year from the date of the testator's death, unless otherwise ordered, or a different rate is directed by the will.

24. A note of every decretal order or final decree made in any suit, or of an order made on a petition, shall be transmitted to the registrar of county court judgments in London, who shall register the same under the direction of the Commissioners of her Majesty's Treasury.

25. All proceedings and documents may be in forms similar to the forms in the schedule to these Orders, where the same are applicable; and in cases where no forms are provided, parties shall frame the proceedings or documents, using as guides those contained in the schedule.

26. The rules and forms and practice heretofore in force in the county courts shall, subject to these Orders, be adopted with reference to suits and proceedings in equity, so far as they shall be respectively applicable.

#### ORDER XXIV.—INTERPRETATION.

1. In these Orders the following words shall have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction; (viz.)

- (1). The words "the act" shall mean the 28 & 29 Vict. c. 99:
- (2). Words importing the masculine gender shall include females:
- (3). Words importing the singular number shall include the plural, and vice versâ:
- (4). The word "party" shall mean a party to a suit or proceeding; and "person" shall mean any person, whether a party to the suit or proceeding or not; and the words "person" or "party" shall include a body politic or corporate:
- (5). The word "affidavit" shall include statutable

affirmations, and attestations upon honour, and the word "sworn" shall include affirmed according to the statute and attested upon honour:

- (6). Where any number of days is mentioned, it shall mean "clear days:."
- (7). The word "court" shall mean the county court having jurisdiction in the suit or proceeding, and the words "judge" and "registrar" shall respectively mean the judge and registrar of that court:
- (8). The words "high bailiff" shall include any assistant bailiff lawfully appointed by the high bailiff, and the word "bailiff" shall include high bailiff.

J. B. DASENT.  
D. D. HEATH.  
J. WORLEDGE.  
RUPERT A. KETTLE.  
WILLIAM FURNER.

I approve of these Orders and Forms to come into force in all county courts on the 1st day of October, 1865.

CRANWORTH, C.

(To be continued).

#### JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Continued from p. 364).

The Accountant-General has furnished a return for the year ended the 1st October, 1864, in the same form as his returns for preceding years, shewing the cash, securities, and other effects paid and transferred into court and out of court, and other proceedings in the office.

The total amounts were—

Paid into court	£20,006,892 15 3
Paid out of court	19,542,385 2 11

The following were the amounts for 1863, with the average of the amounts for the five years 1859-63:—

	1863.	Average, 1859-63.
Paid into court	£17,202,895	£16,176,748
Paid out of court	15,672,509	15,066,767

The number of cheques signed was 45,952. The number of powers of attorney issued was 3328. The total number of accounts was 26,215. For the preceding year these numbers were respectively 43,565, 3096, and 25,050. The averages for the years 1859-63 are 42,178, 3304, and 23,543.

The amount of cash, securities, and other effects carried over in the Accountant-General's book was 2,445,571l. 10s. 4d. For the preceding year the amount was 2,157,800l. The average of the five years is 2,117,130l.

The amount of fees collected by stamps was 682l. For the preceding year the amount was 645l. For the five years the average is 677l.

The following statement of the Suitors' Fund and the Suitors' Fee Fund is made from the annual account presented to Parliament by the Accountant-General, under the act 5 Vict. c. 5, s. 63:—

Suitors' Fund.		
Balance of cash on the 1st October, 1863	£16,970 5 4	
Dividends of 4,112,332l. 2s. 5d. stock	121,502 15 10	
Rent of Masters' offices let to Commissioners of Patents	520 0 0	
Paid in by solicitor to suitors to recoup costs paid out of this fund in 1859	21 1 8	
Total income	139,014 2 10	

Brought forward, total income	£139,014	2	10
Payments	£54,241	8	5
Carried over to Suitors' Fee Fund	63,768	5	2
	118,039	13	7
Balance of cash on the 1st October, 1864	£91,004	9	8
<i>Suitors' Fee Fund.</i>			
Interest brought over during the year from Suitors' Fund	63,768	5	2
Interest brought over from "moneys arising by sale of the Six Clerks' Office"	44	5	10
Interest brought over from "moneys placed out to provide, &c." (stock purchased with surplus fees)	5,867	10	2
Brokerage paid in by the Accountant-General	7,688	14	3
Carried forward	£77,358	15	5

Brought forward	£77,358	15	5
Fees levied on the suitors	98,434	19	3
Paid in by the solicitor to the Suitors' Fund, received by him in respect of rent of chambers	87	1	2
Total income	175,890	15	16
Payments	161,990	9	11
Excess of income over payments for the year ending the 25th November, 1864	£13,900	5	11

The balance of cash to the credit of the Suitors' Fee Fund account on the 24th November, 1863 (the beginning of the year for which the return is made), was 99,252*l.* 9*s.* 0*d.*, and if to that amount there be added the above excess of income over payments for the year (13,900*l.* 5*s.* 11*d.*), there will result 113,152*l.* 14*s.* 11*d.*, which was the balance of cash to the credit of the same account on the 24th November, 1864.

Analysis of the above payments, distinguishing those charged on each of the above two funds:—

<i>Description of Payment.</i>	<i>Total.</i>			<i>Suitors' Fund.</i>			<i>Suitors' Fee Fund.</i>		
	£	s.	d.	£	s.	d.	£	s.	d.
Compensation (including terminable salaries) in respect of abolished offices	51,211	11	2	20,920	1	1	30,291	10	1
Salaries of officers	124,772	13	2	18,433	12	3	106,339	0	11
Pensions to retired officers	12,328	17	7	10,514	0	6	18,14	17	1
Rent, &c. of offices	3,005	2	2				3,006	2	2
Expenses of copying in the offices	11,527	8	11				11,527	8	11
Miscellaneous payments	13,386	5	4	4,373	14	7	9,012	10	9
	£216,231	18	4	£54,241	8	5	£161,990	9	11

The Accountant-General further has furnished, in continuation of information given in the report of her Majesty's Commissioners appointed to inquire into the Accountant-General's department of the Court of Chancery, the following statement, shewing the number of accounts in the books of his department, and

the balances of stocks, securities, and cash in his name, and of the amount of cash remaining invested on account of the Suitors' Fund, and of the stock thereon, on the 1st October, in each of the years 1862, 1863, and 1864:—

Years.	Number of Accounts.	Balance of Stocks and Securities on the various Accounts.	Balance of Cash on the various Accounts.	Balance of Cash in the Bank.	Investments out of Suitors' Cash on account of Suitors' Fund.	Stock purchased on account of Suitors' Fund.	Total Amount of Cash remaining invested on account of Suitors' Fund.	Total Amount of stock purchased with Suitors' Cash.
		£ s. d.	£ s. d.	£ s. d.	£	£ s. d.	£ s. d.	£ s. d.
1862	24,252	53,974,614 18 11	2,861,603 6 7	599,859 4 9	200,000	214,477 4 4	2,264,744 1 10	2,584,967 8 9
1863	25,050	55,616,883 10 4	2,952,721 4 8	487,977 2 10	100,000	110,844 16 8	2,464,744 1 10	2,798,444 13 1
1864	26,215	56,907,901 1 6	3,216,211 5 10	651,467 4 0	..	..	2,564,744 1 10	2,909,769 2 9

The proceedings in the Chancery Court of Lancashire are shewn in a return furnished by the direction of the Vice-Chancellor of the County Palatine of Lancaster for the year ended the 30th September, 1864, in the same form as for preceding years, the proceedings in each of the three districts of Liverpool,

Manchester, and Preston being distinguished as usual. The totals of the proceedings for the three districts under each head, as shewn in the return for 1864, are as follows, in comparison with the totals for 1863, and with the average of the totals for the five years 1858-62, inclusive:—

	1864.	1863.	Average, 1858-62.
The number of suits and matters originated:—			
By bill	108	98	70
By claim	20	23	21
By summons	25	24	20
By special case, petition, &c.	48	51	36
	201	191	147
The number of interrogatories filed	40	38	33
The number of answers and other defences	50	59	38
The number of causes and original matters on motions for decrees, claim, special case, petition, or otherwise:—			
Awaiting hearing at the commencement of the year	—	—	—
Set down during the year	131	134	103

Heard during the year . . . . .	180	132	99
Otherwise disposed of . . . . .	—	3	5
Awaiting hearing at the end of the year . . . . .	—	—	—

The number of causes and original matter for further directions were:—

Awaiting hearing at the commencement of the year . . . . .	—	—	—
Set down during the year . . . . .	30	40	37
Heard during the year . . . . .	30	38	37
Otherwise disposed of . . . . .	—	2	—
Awaiting hearing at the end of the year . . . . .	—	—	—

Number of appeals:—

Awaiting hearing at the commencement of the year . . . . .	2	1	1
Set down during the year . . . . .	—	2	1
Heard during the year . . . . .	2	—	1

The number of decrees and orders of each class, including those made by the registrar, amounted to . . . . .	529	534	474
--	-----	-----	-----

The returns next shew:—

The number of affidavits filed . . . . .	1,372	1,483	1,372
The number of witnesses examined . . . . .	173	183	123
The number of reports and certificates filed . . . . .	452	389	418
The number of warrants or summonses issued . . . . .	1,419	1,266	1,214
The number of advertisements issued . . . . .	60	78	52

The matters relating to money, bills and costs taxed, and fees, were:—

Amount of debts proved . . . . .	£8,508	£10,113	£25,649
Amount realised by sales of estates . . . . .	£28,609	£31,639	£29,801
Number of bills of costs ordered to be taxed . . . . .	235	224	203
Number of bills taxed . . . . .	224	208	214
Amount of costs as taxed . . . . .	£16,847	£14,453	£15,972
Amount paid or transferred into court:—			
Of stock . . . . .	£7,926	£32,150	£8,085
Of cash . . . . .	£84,355	£100,735	£89,123
Ditto out of court:—			
Of stock . . . . .	£34,922	£35,268	£10,670
Of cash . . . . .	£80,409	£64,544	£57,101
Amount of fees received:—			
For compensation fund . . . . .	£244	£245	£233
General fees . . . . .	£3,900	£3,951	£3,590

(To be continued).

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## THE JURIST.

LONDON, OCTOBER 7, 1865.

WHEN should a *lis pendens* be registered, and when should notice be taken of a suit, the pendency of which is registered? These are questions which often occur in practice, and are often answered in such a manner as to occasion unnecessary trouble and expense. We have known a suit to be registered as a *lis pendens*, the only subject-matter of which was a fund in court. And the registration of a suit respecting an estate vested in trustees upon an express trust is not unusual. The case of *Bull v. Hutchins* (9 Jur., N. S., part 1, p. 954; 32 Beav. 615) affords a good illustration of the vague terror with which a registered *lis pendens* is regarded by many half-informed practitioners. In that case some leasehold property had been purchased by Hutchins from Bull on the 11th June, 1862. The purchaser objected to the title, that by an order of the Court of Probate made in 1861, and registered in the Common Pleas, the vendor was ordered to pay an annuity of 25*l.* to A. B. during her life, and that on the 12th September, 1862, the annuitant had filed a bill asking for a declaration, that the annuity was a charge on the leasehold property of the vendor, which suit (*Pratt v. Bull*) was registered as a *lis pendens*. Counsel had advised that the stat. 1 & 2 Vict. c. 110, which gives to orders of the superior courts for payment of money, the effect of judgments, did not extend to courts such as the Court of Probate, created subsequently to the passing of that act; and the point was so decided by Vice-Chancellor Sir J. Stuart, and on appeal by the Lord Chancellor, before the case of *Bull v. Hutchins* came to a hearing. (*Pratt v. Bull*, 9 Jur., N. S., part 1, p. 239; 4 Giff. 117; 1 De G., J., & S. 141). It was, therefore, clear that (there being no other available objection to the title) the plaintiff was entitled to specific performance of the contract; and the only question was as to the costs incurred prior to the decision of the point in *Pratt v. Bull*. The defendant contended that the question as to the effect of the order of the Court of Probate was so doubtful as to entitle him to insist on the objection; and he contended, further, that the registration of the suit of *Pratt v. Bull* operated in some way to create an incumbrance on the vendor's leasehold property. The Master of the Rolls held that the purchaser was not justified in insisting on the objection founded on the order of the Court of Probate; and as to the other question, he made the following remarks:—

“It has been argued that the *lis pendens* creates an incumbrance. I am of opinion that the *lis pendens* is merely notice of some claim made in respect of the property which is the subject of the suit, but that it does not of itself create an incumbrance apart from the equity on which the litigation is founded. If it were otherwise, a *lis pendens*, having nothing to do with the matter, might create an incumbrance. It was notice of the existence of a suit in Chancery, and required all persons dealing with the property to look

at the proceedings to see whether it did affect the property or not. Here the *lis pendens* was no incumbrance, if Pratt had no right against the property, for it depended on the validity of his claim; and if his claim were idle, it could not create any incumbrance on the property. A man might file a bill claiming property, alleging that sixty years ago his ancestor was seised in fee; and that, although he had sold the property, yet he had no right to do so. The plaintiff might register this as a *lis pendens*, but could anybody say that this was an incumbrance on the property, or a reason why a purchaser should not complete his purchase? All that the registration of a *lis pendens* does is to require persons to look into the claims of the plaintiff who registers it.”

The rule as to the effect of a *lis pendens* is commonly stated to be, that (subject to the provisions of the act for registering suits) every one is presumed to have notice of a suit while it is going on, but not after it has terminated; so that a purchaser, after the final decree in a suit, is not deemed to have had any knowledge of the proceedings, though if he had purchased from any of the parties while it was pending, notice of all the equities in question in the suit would have been imputed to him. In *Worsley v. The Earl of Scarborough* (3 Atk. 392), Lord Hardwicke said—“There is no such doctrine in this court, that a decree made here shall be an implied notice to a purchaser after the cause is ended; but it is the pendency of the suit that creates the notice; for, as it is a transaction in a sovereign court of justice, it is supposed all people are attentive to what passes there, and it is to prevent a greater mischief that would arise by people purchasing a right under litigation, and then in contest; but when it is only a decree to account, and not such a one as puts a conclusion to the matters in question, that is still such a suit as does affect people with notice of what is doing.” In the same case his Lordship said, “No case has gone so far, and it would be very inconvenient if where money is secured upon an estate, and there is a question depending in this court upon the right of or about that money, but no question relating to the estate upon which it is secured, but is a wholly collateral matter, that a purchaser of the estate pending that suit should be affected with notice by such implication as the law creates by the pendency of a suit.”

There is often a striking contrast between the wisdom of a rule of law or equity, and the insufficiency of the reasons given for it. To suggest that even in Lord Hardwicke's time all persons were attentive to what passed in the Court of Chancery, but suddenly forgot every cause as soon as the final decree was pronounced, is to give a very absurd reason for a very sound rule. The true reason was given by Sir W. Grant, in the case of *The Bishop of Winchester v. Paine* (11 Ves. 197), where he held that a decree of foreclosure bound a mortgagee of the equity of redemption who had taken his security while the suit was pending. “Ordinarily, it is true, the decree of the Court binds only the parties to the suit; but he who purchases during the pendency of the suit is bound by the decree that may be made against the person from whom

he derives title. The litigating parties are exempted from the necessity of taking any notice of a title so acquired. As to them, it is as if no such title existed. Otherwise suits would be interminable; or, which would be the same in effect, it would be in the pleasure of one party at what period the suit should be determined. *The rule may sometimes operate with hardship upon those who purchase without notice, yet general convenience requires its adoption.* Accordingly, in *Bellamy v. Sabine* (1 De G. & J. 566), it was held by the Lord Chancellor (Cranworth) and the Lords Justices, reversing an order made by Vice-Chancellor Sir W. P. Wood, that the pendency of a suit did not involve notice to a purchaser from one of the defendants of the equitable title of another defendant, which was disclosed by the proceedings, but was not in question in the suit. Lord Cranworth said, "It is scarcely correct to speak of lis pendens as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation. It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party. When a litigation is pending between a plaintiff and a defendant, as to the right to a particular estate, the necessities of mankind require that the decision of the Court on the suit shall be binding, not only on the litigant parties, but also on those who derive title under them by alienation made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end. . . . The doctrine is not peculiar to courts of equity. In the old real action the judgment bound the lands, notwithstanding any alienation by the defendant pendente lite; and certainly that did not depend on any principle arising from implied notice<sup>o</sup>. After all, it would not be material in what form the principle is enunciated, were it not that by treating the question as one of implied or constructive notice, we incur the risk of pushing the doctrine beyond its legitimate limits. This has, I think, been done in the present case." Lord Justice Turner said, "No case, so far as I am aware, has yet occurred in which the doctrine has been applied, so as to affect the title of the alienee of a defendant, by virtue of a claim not interfering with the title of the plaintiff in the pending litigation."

The limitation of the rule to alienation affecting the interest of the plaintiff, was not adopted by the Master of the Rolls in the case of *Tyler v. Thomas* (25 Beav. 47). In that case, a testator devised an estate called Nantypopty, to T. P. Thomas in fee, and gave all his other freehold and copyhold estates to Judith Parry for life, with limitations to her sons and daughters in tail, with remainder to the right heirs of the testator. The testator died in 1836 without heirs. A creditors' suit of *Brown v. Lloyd* was instituted, and the testator's executor, and T. P. Thomas, and Judith Parry, and the Attorney-General were made defendants. After a decree for an account, the Crown

granted the reversion in trust to sell and pay the debts. The lord of the manor having claimed the reversion in fee by escheat, as well as the copyholds, a supplemental suit of *Evans v. Brown* was filed by other creditors against the parties to the other suit, and the grantees of the Crown and the lord of the manor, seeking to establish their rights in priority to the titles by escheat. They obtained a decree in their favour, and in 1846, on the hearing of both suits, a sale of all the testator's lands, except Nantypopty, was directed, without prejudice to the rights (if any) of Judith Parry and her issue to have contribution out of Nantypopty. The sale was made, and the creditors were satisfied, so that nothing remained to be done but to adjust the equities of the defendants, and while the first suit (*Brown v. Lloyd*) was pending for that purpose, it was duly registered. Shortly afterwards, T. P. Thomas conveyed Nantypopty to a mortgagee, who had no notice of the suit. In a suit by Judith Parry (now Judith Tyler) and others against Thomas and his mortgagee, it was held, that the latter was bound by the reservation, in the suit of *Brown v. Lloyd*, of the rights of Judith Parry and her children. The Court observed, that there were many cases in which the plaintiffs had no interest at all, as in cases of interpleader, and suits instituted by executors or trustees to have the rights of all parties determined.

The stat. 2 & 3 Vict. c. 11, which introduced the practice of registering suits, does not in any way extend the operation of a pending suit as against strangers, but simply enacts (sect. 7), that no lis pendens shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court of equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said Court of Common Pleas," &c.

From what has been said, it follows that a search in the Common Pleas registry for lis pendens need only be made in the name of the person from whom a conveyance or mortgage is proposed to be taken, or of some previous vendor or mortgagor, and that if a suit is found to be registered in the name of the proposed vendor or purchaser, but upon inspection of the proceedings is not found to involve any question of title to or charge upon the property proposed to be dealt with, it may be disregarded. And, further, that if a suit is found to be registered against a former vendor or mortgagor, but the entry is subsequent in date to the conveyance or mortgage, it may be disregarded, without any inquiry whether it related to the subject-matter or not; for it is clear, that mere notice of the title of and parties to a suit, is not notice of the object of the suit, or of anything stated or done in it.

We may here remark, that by the 17th section of the 13 & 14 Vict. c. 35 (which introduced the procedure in equity by special case), it is enacted, "that the filing of a special case, and the entering of appearance thereto by the persons named as defendants therein, shall be taken to be a lis pendens, and may be registered under the stat. 2 & 3 Vict. c. 11, and until registered shall not bind a purchaser or mortgagee without express notice thereof." This enactment is not very accurately expressed, but the meaning seems to be, that after the appearance of a defendant to a special case, the suit is to be considered as commenced with regard to that defendant; so that after registration of the case in his name, a purchaser from him will be bound by the declaration of the Court.

COUNTY COURT ORDERS AND FORMS IN  
EQUITY.

(Continued from p. 377).

## LIST OF FORMS.

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- 38.—Order of Revivor.
- 39.—Order of Payment of Legacy into Court of Chancery.
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- 41.—General Heading for, and Indorsement on, Decretal Order or Decree.
- 42.—Mem. to be placed at Foot of every Summons, Notice, Decree, or Order of Court, or any other Process of the Court.
- 43.—Allowances to Witnesses.

## BOOKS.

- A.—Suits and Proceedings in Equity Book.
- B.—Cash Book.
- C.—Ledger.

## SCHEDULE OF FORMS.

1.—UNDERTAKING BY NEXT FRIEND OF INFANT TO  
BE RESPONSIBLE FOR DEFENDANT'S COSTS.

In the County Court of —, holden at —.

I, the undersigned —, being the next friend of A. B., who is an infant, and who is desirous of entering a plaint [or of taking proceedings] in this court against C. D., of &c., hereby undertake to be responsible for the costs of the said C. D., of &c., in the cause, and that if the said A. B. fail to pay to the said C. D., when and in such manner as the Court shall order, all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same.

Dated this — day of —.

(Signed) —.

2.—AFFIDAVIT IN SUPPORT OF APPLICATION FOR  
SUBSTITUTED SERVICE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

I, J. S., of [address and description], make oath and say as follows:—

*State facts shewing that defendant has been within the jurisdiction of the county courts at some time not more than two years before the plaint was filed, and that he is beyond the seas. Or, that upon inquiry at his usual place of abode (if he had any), or at any other place or places where prior to the time when the plaint was filed he might probably have been met with, he could not be found so as to be served, and that in either case there is just ground to believe that he has gone out of the realm or otherwise absconded to avoid being served, and that service on J. N. will be effective to reach C. D.*

*Then state deponent's means of knowledge of the facts deposed to.*

Sworn, &amp;c.

## 3.—ORDER FOR SUBSTITUTED SERVICE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It appearing to me upon the affidavit of —, that it is desirable for the purposes of this suit that service of the plaint be made upon —, at —, and that such service be deemed good service on the defendant C. D., I do order that service of the plaint and summons in this suit be deemed good service upon the said defendant C. D.

Dated this — day of —.

J. S., Judge.

## 4.—ADMINISTRATION.—[Clause 1, of Sect. 1.]

By Creditor.

Plaint in Equity.

In the County Court of —, holden at —.

A. B., of &amp;c. [address and description], Plaintiff,

and

C. D., of &amp;c. [address and description], Defendant.

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of —, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [here insert nature of debt and security, if any].

2. The said E. F. duly made his last will, dated the — day of —, and thereof appointed C. D. executor [or de-

vised his estate in trust, &c., or died intestate, as the case may be].

3. The said will was duly proved by the said C. D. [or letters of administration were granted, &c.]

4. The defendant has possessed himself of the personal [and real, or the proceeds of the real,] estate of the said E. F., and has not paid the plaintiff his said debt.

5. The said E. F. died on or about the — day of —, and had his last place of abode within the jurisdiction of this Court. [Omit this if C. D. has his place of abode within the jurisdiction of this Court.]

6. The whole of the personal [and real] estate of the said E. F. does not exceed in amount [or value] the sum of 500*l*.

7. The plaintiff prays that an account may be taken of the personal [and real] estate of the said E. F., deceased, and that the same may be duly administered under the decree of the Court, and for such further or other relief as the Court may think fit.

This plaint was filed by —, of —, attorney for the plaintiff, or by —, of —.

#### By Legatee (Specific).

Omit paragraph 1, and commence paragraph 2, E. F., late of —, duly made his last will, dated the — day of —, and thereof appointed C. D., executor, "and by such will bequeathed to the plaintiff [here state the specific legacy]."

For paragraph 4, substitute—

The defendant is in possession of the personal estate of the said E. F., and inter alia, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7, substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, &c.

#### By Legatee (Pecuniary).

Omit paragraph 1, and substitute for paragraph 2, E. F., of —, duly made his last will, dated the — day of —, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff a legacy of £—.

In paragraph 4, substitute "legacy" for "debt."

#### By Legatee (Residuary).

Omit paragraph 1, and substitute for paragraph 2, E. F., late of —, duly made his last will, dated the — day of —, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff the residue [or a part or the residue] of his personal [or and the proceeds of his real] estate.

In paragraph 4, substitute "the residue [or share of residue] so bequeathed" for "said debt."

#### Next of Kin.

For paragraphs 1, 2, 3, and 4, substitute—

1. E. F., late of —, was at the time of his death possessed and entitled of personal estate.

2. He died on or about the — day of —, intestate.

3. Letters of administration were duly granted to the defendant, and that he has possessed himself of the personal estate of the deceased [leave out "letters of administration were duly granted to the defendant and that" if none have been granted].

4. That the plaintiff is next of kin [or one of the next of kin] of the said E. F.

#### 5.—EXECUTION OF TRUSTS.—[Clause 2, of Sect. 1.]

Plaint in Equity.

In the County Court of —, holden at —.

A. B., of &c. [address and description] - - Plaintiff.

and

C. D., of &c. [address and description], the or one of the cestui que trusts (see Rule 6 of 15 & 16 Vict. c. 86, s. 42) - - - Defendant.

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under a deed of settlement bearing date on or about the — day of —, made upon the marriage of the said E. F. and G. H., the father and mother of the defendant [or a deed of assignment of the estate and effects of E. F. for the benefit of C. D. the defendant, and other the creditors of E. F.]

2. The said A. B. has taken upon himself the burthen of the said trust, and is seised of — [or in possession of or of the proceeds of] the lands, tenements, and hereditaments [goods and chattels], conveyed [or assigned] by the before-mentioned deed.

3. The trust estate [or fund] does not exceed in amount [or value] the sum of 500*l*.

4. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

5. The plaintiff is desirous to account for all the rents and profits of the said lands, tenements, and hereditaments [and the proceeds of the sale of the said or part of the said lands, tenements, and hereditaments, or goods and chattels, or the proceeds of the sale of or part of the said goods and chattels, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of said trust estate may be administered in the court for the benefit of the said C. D. the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D., and such other persons so interested as the Court may direct, or that the said C. D. may shew good cause to the contrary.

This plaint was filed by —, of —, attorney for the plaintiff, or by —.

[N.B.—Where the suit is by a cestui que trust the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

#### 6.—FORECLOSURE.—[Clause 3, of Sect. 1.]

Plaint in Equity.

In the County Court of —, holden at —.

A. B., of &c. [address and description], Plaintiff.

and

C. D., of &c. [address and description], Defendant.

A. B., the above named plaintiff, states as follows:—

1. By an indenture of mortgage, bearing date on or about the — day of —, 18—, a freehold [copyhold or leasehold] cottage, with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed [or assigned] by the defendant to him the plaintiff, his heirs [or executors, administrators,] and assigns, for securing the principal sum of £—, together with interest thereon after the rate of 6*l*. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since passed.

2. There is now due from the defendant to the plaintiff the sum of £—, for principal and interest on the said mortgage.

3. The plaintiff prays that the Court will order the defendant to pay him the said sum of £—, with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the equity of redemption of the said mortgaged premises may be foreclosed, or that the said premises may be sold, and the proceeds applied in and towards the payment of the said principal, interest, and costs; and he prays that for that purpose all proper directions may be given and account taken by the Court.

This plaint was filed by —, of —, attorney for the plaintiff, or by —.

#### REDEMPTION.

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of £—, which the plaintiff is ready and willing to pay to the defendant, of which the defendant before filing this plaint had notice.

For paragraph 3, substitute—

The defendant prays that he may redeem the said premises, and that the defendant may be ordered to reconvey [or reassign] the same to him upon payment of the said sum of £—, and interest, with such costs as the Court may order (if any), upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such reconveyance [or assignment], and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

7.—SPECIFIC PERFORMANCE.—[Clause 4, of Sect. 1.]  
Plaint in Equity.

In the County Court of —, holden at —.

A. B., of &c. [address and description], Plaintiff.  
and

C. D., of &c. [address and description], Defendant.

A. B., the above-named plaintiff, states as follows:—

1. By an agreement, dated the — day of —, and signed by the above-named defendant C. D., he the said C. D. contracted to buy of [or sell to] him certain freehold property, therein described and referred to, for the sum of £—.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but that he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part, of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said C. D. specifically to perform the said agreement, and to do all acts necessary to put the said A. B. in full possession of the said property [or to accept a conveyance and possession of the said property], and to pay the costs of the suit.

This plaint was filed by —, of —, attorney for the plaintiff, or by —.

[N. B.—In suit for delivery up to be cancelled of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled, such as that the plaintiff signed it by mistake, under distress, or by the fraud of the defendant, and alter the prayer according to the relief sought.]

8.—UNDER TRUSTEE RELIEF ACT.—[Clause 5, of Sect. 1.]  
Proceeding in Equity.

In the County Court of —, holden at —.

In the Matter of —.

The petition of A. B., of &c. [address and description.]  
Sheweth,

1. That by a deed of settlement, bearing date the — day of —, made upon the marriage of C. D. with E. F., certain freehold property in the settlement mentioned was conveyed to [or that C. D., deceased, by his will bearing date the — day of —, and proved on the — day of —, by your petitioner and G. H. in the Prerogative Court of the Archbishop of Canterbury, certain freehold property in the will mentioned was devised to] the petitioner, together with G. H., upon certain trusts, inter alia [here set out the clause or portion of the trust deed or will upon which the order of the Court is required].

2. That the said G. H. died on or about the — day of —, leaving the petitioner surviving trustee.

3. That disputes and doubts have arisen under the clause before set out, as to whether [here set out the specific question upon which the opinion, advice, or direction of the Court is required].

4. That the trust estate [or fund] to which this proceeding relates does not exceed in value the sum of 500l.

5. That the persons interested in this application are I. J., of &c. [address and description], K. L., of &c.

6. Your petitioner prays the Court to declare its opinion, advice, or direction whether [here state specific question which the Court is asked to determine].

This petition was filed by —, of —, attorney for the plaintiff, or by —.

[N. B.—By stat. 23 & 24 Vict. c. 38, s. 9, this must be signed by counsel.]

9.—UNDER TRUSTEE ACTS.

Proceeding in Equity.

In the County Court of —, holden at —.

In the Matter of —.

The petition of A. B., of &c. [address and description.]  
Sheweth,

1. That C. D., deceased, by his will, bearing date the — day of —, and proved on the — day of —, by your petitioner and G. H. in the Prerogative Court of the Archbishop of Canterbury, certain freehold property in the will mentioned was devised to [or that by a deed of settlement, bearing date the — day of —, made upon the marriage

of C. D. with E. F., certain freehold property in the settlement mentioned was conveyed to] the petitioner, together with G. H., upon certain trusts.

2. That the said G. H. died on or about the — day of —, leaving the petitioner surviving trustee.

3. That the said trusts are still unexecuted, and that the petitioner is unable by reason of having left the neighbourhood [or his bodily infirmity, or any cause for relinquishing trust] further to execute the said trusts; that it is for the advantage of the parties beneficially interested in the due execution of the trust that new trustees be appointed by the Court in the place of the petitioner.

4. That — and —, of &c. [address and description], are proper persons to appoint as such trustees.

5. That I. J., of &c. [address and description], and L. M., of &c. [address and description], are the persons beneficially interested in the said trust.

6. Your petitioner prays that the said — and —, or some other persons to be named by the Court, be appointed trustees in his place and stead, and that the cost of the proceeding be ordered to be paid out of the trust fund, and to give such directions as may be necessary for executing such order.

This petition was filed by —, of —, attorney for the plaintiff, or by —.

10.—MAINTENANCE AND ADVANCEMENT OF INFANTS.—  
[Clause 6, of Sect. 1.]

Proceeding in Equity.

In the County Court of —, holden at —.

In the Matter of —.

The petition of A. B., of &c. [address and description.]  
Sheweth,

1. That he is guardian [or trustee] of C. D., an infant, and that by the will of E. F. a sum of £— was bequeathed to the petitioner, upon trust to apply the income thereof to the maintenance and education of the said C. D. during his minority, and to pay the said principal sum of £— to the said C. D. upon his attaining the age of twenty-one years.

2. That the said C. D. is now of the age of fourteen years or thereabouts, and is now resident within the jurisdiction of this Court, and the petitioner has heretofore spent the whole of the accruing interest upon his maintenance and education.

3. That in the opinion of your petitioner it would be greatly to the interest and advancement of the said C. D. if a sum of £—, part of the said principal money of £—, was now expended by the petitioner in payment to G. H., of —, saddler, as a premium to the said G. H. to take and receive the said C. D. as his in-door apprentice.

4. The petitioner prays that he may direct him to use and appropriate the said sum of £—, part of the said principal trust money or sum of £— for the apprenticeship of the said infant accordingly.

This petition was filed by —, of —, attorney for the plaintiff, or by —.

11.—PARTNERSHIP.—[Clause 7, of Sect. 1.]  
Plaint in Equity.

In the County Court of —, holden at —.

A. B., of &c. [address and description], Plaintiff,  
and

C. D., of &c. [address and description], Defendant.

A. B., the above-named plaintiff states as follows:—

1. He and the said C. D., the defendant, have been for the space of — years [or months] last past carrying on business together at —, within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The whole of the property, stock, and credits of such partnership do not exceed in value the sum of 500l.

4. The plaintiff desired to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [deed or agreement].



5. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership trading may be taken by the Court, and the assets thereof realised, and that each party may be ordered to pay into court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [deed or agreement], or that if the said assets shall prove insufficient, he, the plaintiff, and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment of and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by —, of —, attorney for the plaintiff, or by —.

[N. B.—In suits for winding up of any partnership omit the prayer for dissolution; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

12.—NOTICE OF APPLICATION FOR ORDER IN THE NATURE OF INJUNCTION.—[Clause 8, of Sect. 1.]

Proceeding in Equity.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Take notice, that I, A. B., intend to apply at the sitting of the Court at aforesaid, on the — day of — [or to Mr. Judge —, at his sittings at —, or at —, on the — day of —, as the case may be], for an order in the nature of an injunction to restrain C. D. from further prosecuting an action which he has commenced against me in the Exchequer of Pleas to recover damages for the breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, or as the case may be].

Dated this — day of —, 186—.

A. B.

To C. D.

[N. B.—Where the order in the nature of an injunction is to be applied for against a party whose name and address does not appear upon any proceeding already filed in the suit, it must be stated in full to enable the high bailiff to serve the notice.]

13.—SUMMONS ON PLAINT.

No. of Plaint in Equity.

In the County Court of —, holden at —.

(Seal.)

A. B. [address and description], Plaintiff,  
and

C. D. [address and description], Defendant.

You are hereby summoned to appear at the county court, to be holden at —, on the — day of —, at the hour of — in the — noon, to shew cause why the relief prayed for in the plaint hereunto annexed should not be granted.

Dated this — day of —, 186—.

—, Registrar.

To C. D., defendant [or one of the defendants].

N. B.—If you do not attend either in person or by your attorney at the time and place above mentioned, such decree or order will be made and proceedings taken as the judge may think just and expedient.

[Indorsement on Summons].

If you desire to lessen the amount of costs which you may be put to, you should follow such of these directions as may apply.

If you desire to admit the truth of the allegations in the plaint, and to submit to the judgment of the Court, you may, at any time before the return day of the original summons,

appear before the registrar, and in his presence sign an admission of the truth of the plaint and a consent to abide by and perform any decree or order the Court may make.

If you desire to disclaim any interest in the subject-matter of the suit, or if you intend at the hearing to deny any of the statements in the plaint, or raise any question of law upon such statement without admitting the truth thereof, you may deliver to the registrar, within eight days after the service of the summons upon you, a statement signed by you to that effect.

If you intend to rely on a set-off, infancy, coverture, a Statute of Limitation, or a discharge under a Bankrupt or an Insolvent Act, as a defence, you must give notice of such special defence to the registrar five clear days before the day of hearing, and such notice must contain the particulars required by the County Court Rules, 1857; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off, you must, with each notice thereof, deliver to the registrar a statement of the particulars thereof.

Summonses for witnesses and for the production of documents will be issued upon application at the office of the registrar of the Court upon payment of the proper fee.

14.—NOTICE TO ADMIT AND INSPECT.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Take notice, that the plaintiff [or defendant or petitioner] proposes to adduce in evidence on the trial in this cause [or matter] the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff or petitioner], his attorney or agent, at —, on —, between the hours of —; and the defendant [or plaintiff or petitioner] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such document as evidence on such trial.

Dated the — day of —.

G. H., Attorney for —.

To E. F., Attorney for —.

ORIGINALS.

Description of the Documents.	Date.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.

15.—APPLICATION FOR SUMMONS TO PRODUCE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

To the Registrar of the above Court.

I, A. B. [or C. D.], hereby apply for a summons to issue, calling upon —, of —, to attend the Court upon the — day of —, and then and there to produce the following documents:—

A. B. [or C. D.]

## ORIGINALS.

Description of the Documents.	Date.

## COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.

## 16.—SUMMONS TO WITNESS.

No. of Plaintiff in Equity.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

You are hereby required to attend at [Court House in —] on —, the — day of —, 186—, at the hour of — in the — noon, to give evidence in the above cause on behalf of the [plaintiff or defendant, as the case may be], and then and there to have and produce [the several documents hereunder specified], and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power. In default of your attendance, you will be liable to a penalty of 10*l*.

Dated this — day of —, 186—.

—, Registrar.

To —.

[Here insert list of documents mentioned in the application for the summons.]

## 17.—DEFENDANT'S ADMISSION.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the Court thereon.

(Signed) C. D., Defendant.

Signed in the presence of —.

[This paper marked (A.) is the paper referred to in the annexed affidavit.]

## 18.—AFFIDAVIT OF SIGNATURE TO DEFENDANT'S ADMISSION.

No. of Plaintiff in Equity.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

I, —, of —, gentleman, an attorney of her Majesty's Court of —, at Westminster, make oath and say, that I was present on the — day of —, 186—, and did see the above-named C. D., the defendant, sign the statement hereunto annexed, marked with the letter (A), and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

Sworn at —, in the county of —, this — day of —, 186—, before me.

## 19.—DEFENDANT'S STATEMENTS.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said E. F. in the plaint named [or as heir-at-law, or as next of kin, or one of the next of kin, of E. F., deceased, in the said plaint named.]

Or, I, the undersigned defendant, state, that I admit [or deny] [here repeat, in the language of the plaint, the statements admitted or denied.]

Or, I, the undersigned defendant, submit that, upon the

facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or, that it appears upon the said plaint that I am jointly liable with one E. F., who is not a party to the suit, and not severally liable, as by the plaint appears; or, that it appears by the said plaint that G. H. should have been a joint plaintiff with the said A. B. in the said suit; or as the case may be.]

Or, that the plaintiff has conveyed [or assigned] his interest in the said mortgage [or equity of redemption] to one I. J. [or, that I have conveyed or assigned to H. L., by way of further charge for securing the sum of £—, the equity of redemption in the property sought by the suit to be foreclosed.]

Or, that since the dissolution of the partnership the plaintiff has executed a deed under seal, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities, either by or to himself and others, in respect of the said partnership trading, or as the case may be.

(Signed) C. D., Defendant.

Where filed by attorney, add—

This statement was filed by —, of —, attorney for the defendant.

## 20.—DECRETAL ORDER.—ADMINISTRATION SUIT.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.,

or,

In the Matter of the Petition of A. B.

It is ordered that the following accounts and inquiries be taken and made; that is to say—

## In Creditor's Suit.

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

## In Suits by Legatees.

2. An account to be taken of the legacies given by the testator's will.

## In Suits by Next of Kin.

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next of kin [or one of the next of kin] of the intestate.

[After the first paragraph, the decretal order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, devisees, heirs-at-law, and next of kin. In suits by claimants other than creditors, after the first paragraph in all cases an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the personal estate of the deceased come to the hands of the defendant, or to the hands of any other person by his order, or for his use.

5. An inquiry what part, if any, of the personal estate of the deceased are outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the — day of — next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the registrar shall find it necessary for carrying out the objects of the suit, to sell any part of the personal estate of the deceased, that the same be sold accordingly.

8. And that Mr. — be receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding personal estate of the deceased, and pay the same into the hands of the registrar [and shall give security by bond for the due performance of his duties to the amount of £—.]

9. And it is further ordered, that if the personal estate of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken; that is to say—

10. That an inquiry be made what real estate the deceased was seised of or entitled to at the time of his death.

11. What are the incumbrances (if any) affecting the real estate of the deceased, or any part thereof.

12. An account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the

priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

13. And that the real estate of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold, with the approbation of the judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

14. And it is ordered, that — shall have the conduct of the sale of the real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar, and that in case any doubt or difficulty shall arise the papers shall, with the like approval, be submitted to —, Esq., to settle.

15. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

16. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the — day of —, and that the registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the — day of —.

17. And, lastly, it is ordered that this suit [or matter] stand adjourned for making a final decree to the — day of —.

[Such part only of this decretal order is to be used as is applicable to the particular case.]

#### 21.—FORM OF ORDER UNDER ORDER VI, RULE 14, OR UNDER ORDER XII.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It appearing to me that it will be for the benefit of the estate that the remaining outstanding debts be sold, I do order that the debts now due to the estate of E. F., the testator [or intestate], in the plaint in this suit mentioned, be sold as soon as conveniently may be by — [the receiver] by private contract [or public auction] for the highest price that can be obtained for the same.

Dated this — day of —.

J. S., Judge.

#### 22.—FORM OF ORDER UNDER ORDER VI, RULE 14, OR UNDER ORDER XII.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It appearing to me that it is necessary for carrying out the objects of this suit that the real estate [or part of the real estate] of the deceased be sold, I do order that all that freehold [copyhold or leasehold] messuage or tenement, &c. [setting out parcels as in last conveyance], being the real [or part of the real] estate of E. F., late of —, in the county of —, deceased, the testator [or intestate] in the plaint in the suit mentioned, be offered for sale by public auction at the — Hotel, at —, by Mr. —, auctioneer, and be then and there sold [provided the sum bid for the same be not less than £—, or] to the highest bidder without reserve.

Dated this — day of —.

J. S., Judge.

#### 23.—DECRETAL ORDER FOR REFERENCE IN FORECLOSURE SUIT BY LEGAL MORTGAGEE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It is ordered, that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage mentioned in the plaint (making allowance on one side or the other for any rents or profits received by the plaintiff, and for any sums of money lawfully expended by the plaintiff about the mortgaged premises), and to tax the plaintiff's costs of this suit, and that the registrar do certify to the Court on the — day of — what he shall find to be due for principal and interest as aforesaid, and for costs: and upon the defendant paying into court what

shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff do reconvey the said mortgaged premises, free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the registrar all deeds and writings in his custody or power relating thereto; and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid, for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid, then it is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said premises, and the registrar is to settle the conveyance if the parties differ about the same; and it is further ordered, that after the expiration of the said six months, the plaintiff shall be at liberty to apply to the Court for a final decree for the foreclosure of the said mortgage.

[N. B.—Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin, it is declared that the sum of £— is now due to the plaintiff for principal and interest on the mortgage mentioned in the plaint, and it is ordered that the registrar do tax the plaintiff's costs of this suit, and that]

#### 24.—DECRETAL ORDER OF SALE IN A SUIT BY A LEGAL OR EQUITABLE MORTGAGEE OR PERSON ENTITLED TO A LIEN.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It is ordered, that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [or equitable mortgage or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the registrar do certify to the Court on the — day of —, what he shall find to be due for principal and interest as aforesaid, and for costs: and upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff [do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and] do deliver up to the registrar all deeds and writings in his custody or power relating thereto; and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said equitable mortgage or lien] be sold with the approbation of the registrar: and it is ordered that the money to arise by such sale be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

#### 25.—DECRETAL ORDER.—DISSOLUTION OF PARTNERSHIP.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the — day of —, and it is ordered that the dissolution thereof as from that day be advertised in the London Gazette, &c.

And it is ordered that — be the receiver of the partnership estate and effects in this suit, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership.
2. An account of the debts and liabilities of the said partnership.
3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account

exhibited in this suit and marked (A.), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the — day of —, and that the registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the — day of —.

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the — day of —.

#### 26.—FINAL DECREE FOR FORECLOSURE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Whereas it appears to the Court that the defendant has not paid into court the sum of £—, which was on the — day of — last certified by the registrar to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the decretal order made in this suit on the — day of — last, and that the period of six months has elapsed since the said — day of —.

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption off, in, and to the said mortgaged premises.

#### 27.—PARTNERSHIP.

##### *Final Decree.*

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

It is ordered that the fund now in court, amounting to the sum of £—, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting in the whole to £—.

2. In payment of the costs of all parties in this suit, amounting to £—. [*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of £— to the plaintiff as his share of the partnership assets, and of the sum of £—, being the residue of the said sum of £— now in court, to the defendant, as his share of the partnership assets.

[*Or, and that the remainder of the said sum of £— be paid to the said plaintiff [or defendant] in part payment of the sum of £—, certified to be due to him in respect of the partnership accounts.*]

And that the defendant [or plaintiff] do, on or before the — day of —, pay to the plaintiff [or defendant] the sum of £—, being the balance of the said sum of £— due to him which will then remain due.]

#### 28.—NOTICE OF DECRETAL ORDER TO ABSENT PARTY.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Take notice, that on the — day of —, the decree, of which a copy is herewith annexed, was made in this cause, and that from the service of this notice you will be bound by the proceedings in the above cause, in the same manner as if you had been originally made a party to the suit, and that you may attend the proceedings under the said decretal order, and that you may apply to the Court to add to the decretal order.

To —, —, Registrar.

#### 29.—NOTICE TO CREDITOR TO PROVE HIS CLAIM.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the — day of — next, and by attending at my office on the — day of —, 186—,

at — o'clock in the — noon, being the time appointed for adjudicating on the claim.

Dated this — day of —, 186—.

To —, —, Registrar.

#### 30.—NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of £—, with interest thereon at £— per cent. per annum, from the — day of —, 186—, and £— for costs.

[*If part only allowed, add, if you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the — day of — next, and by attending at my office on the — day of —, 186—, at — o'clock in the — noon.*]

Dated this — day of —, 186—.

—, Registrar.

#### 31.—REGISTRAR'S CERTIFICATE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

In obedience to the decretal order of this Court made in the above suit, I hereby certify that the result of the accounts and inquiries [or, of the sale and apportionment] which have been taken and made in pursuance of the — made in this —, dated the — day of —, 186—, is as follows.

The plaintiffs and defendants have attended by themselves or by their respective attorneys.

##### *Notice of Decretal Order.*

Notice of the said decretal order of the — day of —, 186—, has been served upon —.

The persons so served include all the — now living, and the personal representatives of such of them as are dead, except such as are parties to this suit, and except —, hereinafter named —.

Service of notice of the said decretal order upon the said —, was dispensed with.

##### *Personal Estate Account.*

The defendant —, the executor [or administrator] of —, the testator [or intestate] named in the said —, have received personal estate to the amount of £—, and they have paid, or are entitled to be allowed, on account thereof sums to the amount of £—, leaving a balance due from [or to] them of £— on that account.

##### *References to Account.*

The particulars of the above receipts and payments appear in the account marked (A.), verified by the affidavit of the said defendant —, filed the — day of —, and the account marked (B.), verified by the affidavit of —, filed the — day of —, and which accounts are to be filed with this certificate.

##### *Variations from Accounts.*

Except that in addition to the sums appearing in such account to have been received, the said defendant [or plaintiff] is [or are] charged with the following sums (that is to say), £—; and except that of the items of disbursement in the said account I have disallowed those numbered —, and I have deducted from the item numbered — the sum of £—, and from the item numbered — the sum of £—, and in addition to the disbursements appearing in such account the said defendant has paid and been allowed the sum of £—.

##### *Special Allowances in Accounts.*

The payments allowed to the said defendant [or plaintiff] in the said account include the sum of £— paid into court to the credit of this cause, on the — day of —, 186—.

##### *Reference to Transcript of Account.*

The before-mentioned account marked (A.) has been altered, and the account marked (A. B.), and which is also to be filed with the certificate, is a transcript of the said account marked (A.), as altered and passed.

##### *No Personal Estate received.*

The defendant —, the executor [or administrator] of the testator [or intestate] named in the said — have not,

nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [or intestate].

#### *Funeral Expenses.*

The funeral expenses of the testator [or intestate], amounting to the sum of £ —, have been paid and are allowed the defendant [or plaintiff] —, the executor [or administrator] of the said testator [or intestate] in the said account of personal estate [hereinafter mentioned].

#### *Debts.*

The debts of the testator [or intestate], including the plaintiffs which have been allowed are set forth in the — schedule hereto, and, with the interest thereon, and costs mentioned in the said schedule, are due to the plaintiff and the other persons therein named, and amount altogether to £ —. No other person has been allowed, or come in and proved, any debt against the estate of the said testator [or intestate], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specialty are set forth in the first part of the said — schedule, and amount to £ —; such as are simple contract are set forth in the second part of the said — schedule, and amount to £ —.

#### *Interest on Debts.*

The interest on such debts is computed down to the date of this certificate, and after the rate of 4l. per cent. per annum, from the — day of —, 186—, the date of the said decretal order, unless otherwise specified in the said schedule.

#### *Legacies and Annuities.*

The legacies given by the testator other than annuities, are set forth in the first part of the — schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £ —.

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said — schedule. Such arrears amount to £ —.

#### *Interest on Legacies.*

The interest on such legacies is computed down to the date of this certificate, and after the rate of 4l. per cent. per annum, from the — day of —, 186—, the end of one year after the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate, and from the testator's death, unless otherwise specified in the said schedule.

#### *Outstanding Estate.*

The personal estate of the said testator [or intestate] [not specifically bequeathed] outstanding or undisposed of, consists of the particulars set forth in the — schedule hereto.

#### *Real Estate.*

The real estate which the said testator [or intestate] was seised of or entitled to consists of the particulars set forth in the — schedule hereto.

#### *Incumbrances on Real Estate.*

The incumbrances affecting the said testator's [or intestate's] real estate are specified in the — schedule hereto.

#### *Rents and Profits Account.*

The defendants [or plaintiff] —, the trustee named in the said decretal order have received rents and profits of the testator's real estate, —, to the amount of £ —, and they have paid or are entitled to be allowed on account thereof sums to the amount of £ —, leaving a balance due from [or to] them of £ — on that account.

#### *No Rents and Profits received.*

The defendants [or plaintiff] —, the trustees named in the said decretal order, have not, nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any sum or sums of money on account of the rents and profits of the testator's [or intestate's] real estate.

#### *Next of Kin.*

The next of kin, according to the statutes for the distribu-

tion of the effects of intestates, of —, the intestate named in the said —, living at the time of his death were —, of whom the said — have since died.

The legal personal representative of the said —.

The legal personal representative of the said —.

The legal personal representative of the said —.

Dated this — day of —.

—, Registrar.

#### 32.—NOTICE THAT REGISTRAR'S CERTIFICATE MAY BE INSPECTED.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Take notice, that the certificate of the result of the inquiries made and accounts taken by me under the decretal order of this Court made on the — day of —, in this cause, lies in my office, and can be inspected by you up to and inclusive of the — day of — [here insert the day before the cause is to be further heard].

Dated this — day of —.

—, Registrar.

To —.

#### 33.—BOND TO BE GIVEN BY RECEIVER.

Know all men by these presents, that we, A. B., of &c., and C. D., of &c., and E. F., of &c., are jointly and severally held and firmly bound to G. H., registrar of the county court of —, holden at —, in £ —, to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —.

And whereas a plaint in equity has been filed in this court by A. B. against C. D., for the purpose of [here insert object of suit].

And whereas the said A. B. has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the real [or freehold, or copyhold, or leasehold] estate [or estates] [and to get in the outstanding personal estate] of C. D., the testator in the said plaint named.

Now the condition of this obligation is such, that if the above bounden A. B. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estates, and in respect of the personal estate, of the said C. D. [or as may be] at such periods as the said Court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise shall remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

Signed, sealed, and delivered by the above

bounden, in the presence of —.

*Note.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

#### 34.—WARRANT OF EXECUTION ON A DECREE OR ORDER OF THE COURT FOR THE PAYMENT OF MONEY.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Whereas on the — day of —, 186—, this Court did, in the matter of this suit, decree [or order] that A. B. [or C. D.] should pay to C. D. [or A. B.] [or should pay into court] the sum of £ —; and whereas a copy of such decree [or order] was duly served upon A. B. [or C. D., as the case may be]: and whereas the said A. B. [or C. D.] has not paid the said sum of money according to the said decree [or order]: these are, therefore, to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the said A. B. [or C. D.], wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of 5l.), the sum stated at the foot of this warrant, being the amount directed to be paid by the said decree [or order], including the costs of this execu-

tion; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of A. B. [or C. D.] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this — day of —, 186—.

By the Court,

—, Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

Amount ordered to be paid . . .  
Costs . . .

Total amount to be levied . . .

### 35.—WARRANT OF ASSISTANCE.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Whereas, according to the tenor and true meaning of a decree [or an order] bearing date the — day of —, 186—, made in the matter of this suit, the said defendant C. D. was ordered to deliver up possession to A. B. in the said order named of all that, &c. [as in order]: and whereas a copy of such decree [or order] was duly served upon the said C. D., yet nevertheless he, the said C. D., and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep possession of the said house [or tenement and premises]: these are, therefore, to authorise and require you to forthwith enter into and upon the said messuage [or tenement and premises], and that you do remove, eject, and expel the said C. D., his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [or tenement and premises], and every part and parcel thereof, and that you do place and put the said A. B. and his assigns into the full, peaceable, and quiet possession thereof, and defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them, or any of them, according to the true intent and meaning of the said order; and herein you are not in anywise to fail.

Given under the seal of the Court this — day of —, 186—.

By the Court,

—, Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

### 36.—WARRANT OF POSSESSION.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Whereas, on the — day of —, 186—, this Court did in the matter of this suit decree [or order] that you, the high bailiff of this court, should [or that A. B. should] take possession of the goods and chattels of E. F., deceased, in the said suit mentioned, and which at the date of the said order were in the possession of the defendant [and sell and convert the same into money, or keep and hold the same to abide the further order of the Court, as the case may be].

These are, therefore, by virtue of the said decree [or order], and the statute in such case made and provided, to will and require, authorise, and empower you, and every one of you to whom this warrant is directed, forthwith to enter into and upon the house and houses of the said C. D., and also in all other place or places belonging to the said C. D., where any of the goods or chattels, part of the estate of the said E. F., deceased, are suspected to be; and there to seize all the goods and chattels whatsoever belonging to the estate of the said E. F., deceased.

And in case of resistance, or of not having the key or keys of any door, or lock of any premises belonging to the said C. D., where any of the goods or chattels, part of the estate of the said E. F., are suspected to be, you shall break open,

or cause the same to be broken open, for the better execution of this warrant.

Given under the seal of the Court this — day of —, 186—.

By the Court,

—, Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

### 37.—NOTICE OF CHANGE OF ATTORNEY.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

To the Registrar of the Court,

Take notice, that I, A. B. [or C. D.], have hitherto employed as my attorney G. H., of —, in the above-mentioned cause, but that I have ceased to employ him, and that my present attorney is I. K., of —.

A. B. [or C. D.]

### 38.—ORDER OF REVIVOR.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.

Upon application of [here state by whom the application is made, and the events which have happened rendering it necessary to apply], I do order that this suit stand revived, and be in the same plight and condition as the same was in at the time of the said abatement.

Dated this — day of —.

J. S., Judge.

### 39.—ORDER OF PAYMENT OF LEGACY INTO COURT OF CHANCERY.

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.,

or,

In the Matter of —.

Whereas it has been found by this Court, by its decree of the — day of —, in this suit [or matter], that K. L., of —, is entitled to the sum of £—, and whereas the said K. L. is an infant [or absent beyond seas], and it appearing to the Court that it is desirable that, under the power given to it by the 5th section of the act of Parliament passed in the 28 & 29 Vict. c. 99, C. D., the defendant in this suit [or matter, or as the case may be], should be ordered to pay such sum of money to the Accountant-General of the Court of Chancery, in accordance with the provisions of sect. 32 of an act passed in the session of Parliament held in the 36 Geo. 3, c. 52, it is ordered that the said [—] do pay the same accordingly, and do within — days produce to the registrar of this court the certificate of the said Accountant-General of the payment to him of such money.

By the Court,

—, Registrar.

### [INDORSEMENT ON LAST ORDER.]

*N.B.—Your attention is drawn to the following provisions of the Act 36 Geo. 3, c. 52, and to the Rule of this Court.*

Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found or declared entitled by any county court in any suit or matter under this act, may be ordered by the Court to be paid to the Accountant-General of the Court of Chancery, in accordance with the provisions of sect. 32 of an act passed in the session of Parliament held in the 36 Geo. 3, c. 52; and the person ordered to pay the same shall, within such time as the Court shall direct, produce to the registrar of the court the certificate of the Accountant-General of the payment of such money; and if default be made in such payment, the judge may direct a warrant of execution to issue to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied, by distress and sale of the goods and chattels of such person, a sum of money equal in amount to the sum which he was ordered to pay to the said Accountant-General and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the said Accountant-General under the direction of the Court.

*Rule of Court.*—Where default shall be made in the production of the certificate of the Accountant-General, the re-

gistrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with sect. 5 of the act.

**40.—ORDER OF TRANSFER OF SUIT OR MATTER TO COURT OF CHANCERY.**

In the County Court of —, holden at —.

In the Suit of A. B. v. C. D.,

or,

In the Matter of —.

Whereas it appearing that the subject-matter of this suit exceeds in amount the sum of 500*l.*, it is ordered that this suit [or matter] be transferred to the High Court of Chancery, together with the annexed certificate of the registrar of this court, shewing the state of the suit [or matter] and the proceedings that have been had therein in this court.

By the Court,

—, Registrar.

**41.—GENERAL HEADING FOR AND INDORSEMENT ON DECRETAL ORDER OR DECREE.**

In the County Court of —, holden at —, on the — day of —.

Upon the hearing this day of Mr. —, for the plaintiffs, and upon the hearing of Mr. —, for the defendants [or if some of the defendants do not appear, then for the defendants C. D., &c., and no one appearing for the defendants E. and F., it is ordered]

[INDORSEMENT.]

Take notice, that unless you obey the directions contained in this order, obedience thereto will be enforced in such manner as the law provides.

**42.—MEM. TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.**

Hours of attendance at the office of the registrar [*place of office*] from ten till four, except on [*here insert the day on which the office will be closed*], when the office will be closed at one.

**43.—ALLOWANCE TO WITNESSES.**

Gentlemen, merchants, bankers, and professional men, per diem, from £0 10 0 to £1 0 0  
 Tradesmen, auctioneers, accountants, clerks, and yeomen, per diem, from . . . . . 0 5 0 to 0 10 0  
 Artisans and journeymen, per diem, from . . . . . 0 3 0 to 0 5 0  
 Labourers and the like, per diem, from . . . . . 0 2 0 to 0 3 0  
 Travelling expenses, sum reasonably paid, but no more than 6*d.* per mile one way.

**A.—SUITS AND PROCEEDINGS IN EQUITY BOOK.**

No. of Plaint or Petition —.

Date of Filing —.

**PARTIES' NAMES.**

Plaintiffs.	Defendants.
Name and Address of Plaintiffs' Attorney.	Name and Address of Defendants' Attorney.

**NATURE OF SUIT OR PROCEEDING.**

**PROCEEDINGS.**

By Plaintiff.			By Defendant.		
Letter on filing.		Date.	Letter on filing.		Date.
	Here enter applications for substituted [or other] service of summons, subpoenas, injunctions, &c., or documents filed.			Here enter applications for subpoenas, and filing of admissions, statements, &c.	

**DECRETAL ORDER MADE ON RETURN DAY OF SUMMONS OR ADJOURNMENT.**

Here set forth the Nature of the Decretal Order.	Date of Hearing.	Date of Adjournment.

**PROCEEDINGS.**

By Plaintiff.			By Defendant.		
Letter on filing.		Date.	Letter on filing.		Date.
	Here enter all ex parte applications, or otherwise, and whether made by plaintiff or registrar, documents filed, warrants issued, &c.			Here enter all documents filed, &c.	

Letter on filing.	CERTIFICATE.	Date.
	Date on which it was directed to be prepared for Court . . . Application to vary by . . . Application refused [or granted] . . . Date on which it was filed as confirmed [or as varied] . . .	

Letter on filing.	FINAL DECREE.	Date of making.
	Here set forth shortly the particulars of the decree, such as the acts to be done, or sums to be paid, &c.	



Letter on filing.	APPEAL.	Date.	Letter on filing.	COSTS TAKED.	£ s. d.	Date.
	Here enter proceedings had.			Plaintiff's bill; Defendants' bill; state out of what fund to be paid, &c.		

## EQUITABLE JURISDICTION.

## B.—CASH BOOK.

Receipts.					Payments.			
Date.	No. of Plaint or Petition.	Suit or Matter.	Ledger Folio.	Amount.	Date.	No. of Plaint or Petition.	Ledger Folio.	Amount.
		A. B. v. C. D.						

## EQUITABLE JURISDICTION.

## C.—LEDGER.

In the Suit of A. B. v. C. D.  
In the Matter of —.

Plaint No. of —.  
Petition No. of —.

Folio in Cash Book.	Date when received.	Names of Per- sons from whom received.	On what Ac- count and from what Source re- ceived.	Amount received.	Folio in Cash Book.	Date when paid or allowed.	Names of Per- sons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.

CASES AND CODES.—There is not a case in the books that does not stand, like the Alpine cross, to mark the scene of some fatal event. By right or might these famous rules of our law have become what they are, by the very sweat of the brow. At the making of every one of them there has been a conflict of interests or passions, which are indeed but theoretical interests, conducted on each side by chosen advocates possessed of more than all the virtues under heaven, and an indomitable spirit of contradiction. These come from all parts to fidget and draw out the judge, as the Queen of Sheba did King Solomon, by trying him with hard sayings. Can you not do without them? If the assisted judge sometimes err, shall the unassisted code-maker always keep his path straight? An embryo doubt is often more difficult to manage than a full-grown absurdity. Suppose you had been making your coffin (for what is a code proper of old statutes and reports, but "foenum cophinusque?") in the year 1790, how would you have provided for the case of a devise to sell land, and pay part of the proceeds to a person who should happen to die before the testator? How would you have done this impossible thing? To whom would you have given this share? You must have done something, for you would have undertaken to fix secondary rules. Lord Thurlow, the irascible mid-day Pan of his time, would have done it his own way, and done it wrong, if a certain Mr. John Scott, a young and unknown man, had not stepped forward with maiden blushes, and a mind all conglomerate with fine logic and weekly bills, and the contemptuous incredulity of his client, and the customary amaritudes of Rhadamanthus, and shewn his

lordship how to do it in a speech for a crown. And this Mr. Scott you will not see, and if you do see him he will have nothing to say; for the flint gives no fire without the steel, and there can be no steel without hot and cold, and two forces make the world go round, and two doubts make a certainty; and counsel can neither think, say, do, or be anything without an opponent. Be it Tully and Hortensius, or muff and anti-muff, an equal adversary relieves conscience, for the counsel then knows that in the ordinary course of legal disceptations, what he says will be suspected, and what he says not will be disputed and gets affronted by everybody about him in such a variety of ways, that he feels free to retort beforehand, and rushes, shouting, into the jungle to excite, perplex, and madden his lordly judge as best he may. Yet, with all this, a case without a deal of nonsense is a case without discussion, and of infirm authority; unless a conveyancer's case, which, like a crane, often stands firmer and fishes to better purpose on one leg than on two. No one foresaw the Thellusson riot. The unwritten law did not, because it had got entangled with policy, the matrix of written law; but the hit told, a note was made, and a remedy provided. This was because unwritten law appeals to conscience, which in court matters is known on earth as "law in idleness," and is very uneasy and talkative; and thus it came to be said,—Would sound reasoning support the trusts of this will? And so the thing came to be bandied about a good deal until it dropped into the ink, which is the amber of absurdity and syrup of wisdom, and made a great sensation. But a code article is a spoilt child, and must not be contradicted,

and admits of no study; and if there had been such an article protecting this impolitic will, there might have been much derision and misery in by-places; but the force and arms, the wrong and injury of the affair, would never have come to light any more than the real point in *Jarndice v. Jarndice*, or what there was in *Carstone's case* that was to be set right in the next world, or why it was reported at all. Rights seemingly unprotected at common law, come out strong and clear at last, after a little adversity, from mere force of character.

The new statute, or code, cannot be intelligibly expressed by any industry, care, learning, judgment, obstinacy, or any means whatever. Construction, like an offended fairy, will be sure to step out from some nook or corner, and throw in a perverse charm to spoil the feast.—*Thoughts on Legal Discontent*. 1855.

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## THE JURIST.

LONDON, OCTOBER 14, 1866.

## DISCHARGE OF THE JURY IN CAPITAL CASES.

THE judges, in the ensuing term, will probably have to consider one of the weightiest questions which can arise in criminal procedure; whether, in a capital case, after the evidence has been closed, and the jury have considered of their verdict, they can, without any illness or physical necessity—and merely because they are not agreed—be discharged, with a view to a new trial on a future occasion. We believe we can venture to say, that if it is held that this can be done, it will be the first time it has been so held; although we are all quite aware that it will not be the first time it has been *done*. Indeed, there is an impression abroad, that it has been decided that it may be done, but this is a mistake; on the contrary, the authority of any decision, so far as it goes, is rather the other way; and the point certainly may have been decided by a Court of Error, the only Court that can possibly settle it. In the case which is supposed to have settled the question, it was not determined at all; all that the Court decided was, that they had no authority to determine it. That case was *Reg. v. Newton* (13 Jur., part 1, p. 606). The marginal note of that case goes beyond the actual decisions, and may have been misunderstood. It states it as held, that where a prisoner has been put upon his trial for a capital offence, and the jury, after the lapse of a reasonable time, are unable to agree in a verdict, it is in the discretion of the presiding judge to discharge them, if he thinks a case of necessity for so doing is made out. (*Reg. v. Newton*, 13 Jur., part 1, p. 606; 18 L. J., M. C., 201).

"The fact of a jury having been locked up from two P. M. to eight A. M. on the following morning, and there then being no prospect of their agreeing, and the duty of the judge requiring his presence at the next circuit town on that day, is a sufficient case of necessity to justify the discharge of the jury. (Ib.)

"The propriety of the discharge of the jury cannot be questioned on a habeas corpus; at all events until the lapse of two assizes after the committal of the prisoner, the warrant of commitment being a justification of the detention." (Ib.)

But, in truth, only the third point was in reality determined, viz. that the propriety of the discharge of a jury at the assizes could not be questioned on a habeas corpus issued by one of the Courts at Westminster, which, in effect, had already been decided. (*Reg. v. Dunn*, 5 C. B. 215). The courts of oyer and terminer and gaol delivery are, as was held in *Reg. v. Charlesworth* (1 B. & S. 406), superior courts, and cannot be interfered with by the Courts at Westminster. The only Courts to review these decisions are, at common-law a Court of Error, and by statute, the Court for Crown Cases Reserved. The latter Court has no jurisdiction unless the point has been reserved at the trial. And to bring a question before a Court of Error it must be raised on

the record; and in a criminal case there must be the fiat of the Attorney-General, which, in such a case as the present especially, as the prisoner has already been respited, will no doubt be granted. There are three other recent cases in which a somewhat similar question has been raised; but they none of them settle it, and all leave it still undetermined. Two out of the three, *Reg. v. Davison* (2 Fost. & F. 250) and *Reg. v. Charlesworth* (1 B. & S. 460), were cases of misdeemeanour, and the other, *Reg. v. Conway* (7 Ir. Law Rep. 147), which was a case of felony, was a decision that the discharge of the jury was, at all events, in the particular case, improper; so that anything said in favour of the contrary view was obiter. That case so far resembled the present that there, as in the present, the jury were discharged because they could not agree on the day before the commission had to be opened at the next county, whereas, here, it was two days before. The ground of the discharge in both cases was the same, viz. the nearness of the assizes for the next county; the difference was only in degree, and, of course, would make no distinction in principle. So the learned judge thought in the present case, that if there was power to discharge the jury on any such ground at all, the mere time at which it was done (there being no illness or physical necessity), as it must be a matter for the discretion of the judge, could make no difference in point of law; and we are disposed to agree with him, although certainly, in the present case, the time was as short, and the excuse as slight, as it could possibly be; for the jury had only been locked up four hours. They retired on Saturday evening, and were discharged between eleven and twelve at night, and the whole of Sunday intervened before the commission day for the next county, and, as every one knows, business does not commence until the next day. But, in truth, for different reasons, this does not matter at all in point of law; because the time could only be material in a legal view, as an evidence, or element, or necessity for the discharge; and on neither of those views, in this case, was it material. In point of fact, the jury were not ill or faint, or in any apparent danger of illness; and as to the proximity of the assizes for the next county, it was no reason at all for the discharge of the jury, because it was no reason at all for the departure of the judge. Even if it was so, the judge may receive the verdict in a "foreign" county; but Hawkins lays it down, the commission of gaol delivery is not limited in point of time, and the judge may wait in a county as long as necessary. For that very reason, the commission always includes in it the names of all the serjeants and Queen's counsel, who, with the other judge of assize, can easily discharge the commission in the next county, and constantly do so. The very judge who presided at the first trial in this case, Mr. Baron Channell, sat at Chelmsford a week after the business was finished to try the *Rouppell* case, and never sat at Lewes at all; so that it cannot be pretended that there was any necessity for the discharge of the jury on that ground. The utmost that could be said is, that there was convenience; but there

is not an atom of authority to shew that *convenience* is a sufficient ground for discharge of the jury in a capital case. On the contrary, it is laid down as clear law in all the authorities, ancient and modern, that it can only be done in cases of *necessity*; and the only cases in which it has been held lawful to do it have been cases not only of actual physical necessity arising from illness, but of necessity arising in the course of the trial *before the jury retired*. (*Reg. v. Edwards*, 4 Taunt. 309). No authority can be found in the whole annals of the English law for the discharge of the jury in a capital case *after* they have retired, and *without* physical necessity. All the instances in modern times have been instances of death or illness occurring in the *course* of a trial. (*Reg. v. Talbot*, 2 Leach's C. C. 706; *Reg. v. Meadows*, 1 Fost. & F. 76; 2 Jur., N. S., part 1, p. 713; *Reg. v. Stevenson*, 2 Leach's C. C. 618; *Reg. v. Street*, 2 Car. & P. 413). That no mere *difficulty* in the way of a verdict arising from moral, not natural, causes will suffice, is shewn in the strongest way by the case of *Reg. v. Wardell* (1 Car. & M. 120), where Tindal, C. J., refused to discharge a jury on the ground that one of them was found to be a relative of the prisoner. Of course, in such a case there could be no chance of a conviction, so that it comes, in principle, as near as possible to the present, which is one in which the jury said they could not agree—*why*, did not appear. If we may judge from what took place at the second trial, the reason was the insufficiency of the evidence; for on the second occasion one of the accused was called as a witness to complete the case against the other. We may fairly suppose that the prosecution thought there was no chance of getting a verdict on the former evidence. Then, if so, that is strong to shew that the former jury were justified in their doubts, and ought to have acquitted, and probably would have done so had they been left alone. At all events, it is possible they may have done so. And that raises the grave and weighty question, whether, in such a case, where the verdict is wanting, not by reason of illness, or any physical cause, but from doubt among the jurors, from the deficiency of the evidence, it is competent to the judge to discharge the jury, with a view to a new trial? To bring this before the mind fully and forcibly, it is necessary to bear in mind two fundamental maxims of criminal procedure—that the accused is entitled to the benefit of a doubt, and that there can be no new trial. No one ever heard a judge sum up in a criminal (at all events a capital) case, without laying down the first rule; and as to the second, every one is aware of it. It results, that if the jury really doubted, they were bound in law to acquit; and that if they had acquitted, the accused could not have been tried again. It is quite consistent with the facts, and rather more probable than the reverse, that on this occasion the doubts of the jury were sound. If so, they were bound in law to acquit. Instead of examining them, to see if their doubts were reasonable, and telling them, if they were so, to acquit, the judge simply discharged them, in order to have the accused tried again. That is, in other words, he deprived the prisoner, it may be, of a verdict of acquittal, to which, possibly, she was

entitled in law; and which, at all events, she may have obtained. And, indirectly, the prosecution had the benefit of a new trial, with the additional advantage of having the opportunity, by its being postponed, of shaping the case differently, and calling fresh witnesses. On this occasion, not only was this advantage obtained and acted upon, but the most dangerous of all witnesses (an accomplice) was called to perfect the case against the other prisoner. That this was so in the particular instance does not, of course, help the argument in point of law; but it does help to shew that such may be the consequence in any case, if such a practice is allowed. That is to say, that the mischief which the law so dreads, even in civil cases, that it will not grant a new trial to enable a plaintiff to call evidence he might have called before, may be let in, not only in criminal, but capital cases. The mischief of allowing a party to take his chance of a verdict on certain evidence, and then, on his failing to secure a verdict, trying again on different evidence, what could be more perilous in criminal cases? Yet if the jury may be discharged, and the trial put off, this is what it will come to in every case. So soon as it is seen that a jury hesitate to convict, they may be discharged, and the trial may be put off; the prosecutor can come again with fresh evidence and a new case. It is this postponement of the trial which renders the discharge of the jury more serious; and it is obvious, that if the reason assigned for the discharge is valid, it will equally avail for the postponement; for the only reason assigned was, that there was not time to consider longer of a verdict; and if so, of course, there was not time to try the prisoner again. But, on the other hand, if the reason fails for the discharge, of course it fails for the postponement; and if there was time to consider as long as was necessary, there was time to try the prisoner again at the same assizes. Or again, to reverse the way of putting it, if there was time to try the prisoner again, there certainly was no necessity for the discharge of the jury. But there certainly was time to try the prisoner again, as already has been shewn, for the simple reason, that no time is limited to the discharge of the commission at all. And, indeed, one of the points decided in *Reg. v. Charlenworth* was (as is laid down in *Hawkins*), that the commission continues until revoked, and is indefinite in point of time. If, indeed, there was a necessity for the judge to leave the county, that would only shew some default on the part of the clerk of the assize or clerk of the Crown, in not allowing time enough to try the prisoners; and that default could hardly prejudice the prisoner, or deprive her of any right. Her legal right, we conceive, was to be tried at those assizes, if it were possible, or unless she applied to have the trial put off. And the duty of the judge, as we conceive, under his commission, was clear and positive, to deliver the gaol. From that duty, which he had an indefinite time to discharge, only "the act of God or the Queen's enemies" could excuse him. An assize altogether, we are aware, may be put off for *necessity*; but *having* a jury panel, a judge cannot legally discharge them, we apprehend, until he has discharged his commission, and delivered

the gaol. Even if he could not stay at the time, or if the jurors had departed, that would only justify such delay as was necessary to summon another jury (which the Jury Act affords ample power to do), and he might have come back after the assizes for the next county were on. The idea that because the time has come for opening the commission in the next county, that, therefore, the commission in the previous county must be closed, has not the least shadow of a foundation in law. On the contrary, the law has carefully guarded against, and taken ample precautions to prevent, any difficulty from arising on any such ground. The precautions with which the law has protected the prisoner in capital cases, doubtless, had their origin in practical experience, which has been amply illustrated in the present instance. The consequence of throwing over the trial to another assize, of course, would be, and was, that the case was canvassed and discussed all over the county; and the newspapers spoke of it as an escape of a great criminal, and a sad miscarriage of justice. The result was, that it was hardly possible that the accused at the next assizes should have had a perfectly unprejudiced or unbiassed trial. Nor was this all. At the last moment, without any warning, suddenly her fellow-prisoner is taken from the dock to swear away her life to save her own. The idea of such a surprise upon a prisoner in a capital case is really shocking. Very likely in the particular case the prisoner convicted was guilty, though it is impossible to place any reliance on the evidence of an accomplice under such circumstances—swearing in order to liberate herself from the gallows. But that a course should be allowable which admits of such a surprise upon one accused of a capital crime, does strike us not only as a violation of legal principle, but substantial justice. And yet it is the inevitable course given, or of the power claimed, to discharge the jury in such cases, on such a ground, that the trial should be postponed; and it is the necessary consequence of such postponement, that the prosecution should have the power to reshape its case, and get up fresh evidence, spring new witnesses on the accused, and subject her to the most sudden and unexpected surprise; whereas if the trial went on at the same assizes, this could hardly occur. There are differences in criminal procedure between capital cases, or cases of felony, and cases of misdemeanour. The law is tender of human life, and originally all felonies were capital. Hence a jury may not separate in a case of felony; the reason being, that they may possibly be exposed to prejudice or influence from discussion of the case. There can be no doubt that such a separation, in a case of felony, would vitiate a verdict against the prisoner; and if there is power to discharge the jury for disagreement, and postpone the trial, the whole jury panel are allowed to go about for months, discussing the case, and getting prejudiced and influenced. The rules of our criminal procedure were based upon practical experience, and the disregard of them is certain to lead to practical mischiefs and evils. If there is power to discharge the jury in such cases, merely on the ground of the want of time, then in every such case the trial will be postponed, and these practical evils will follow. But the law has pointed out other means of meeting the difficulty of doubt among the jurors. They may desire to hear some of the evidence again, or to propose some question to the Court; or they may require to be guided and directed. And this course is alluded to by all the old writers. (Hale's P. C. 296). Hale lays it down distinctly, "that by the ancient law (as Lord Coke declares it), if the jury had once been charged with a prisoner (that is, as he

explains it—on the evidence being closed), they must give their verdict, and cannot be discharged before their verdict given." And although he adds, that "the contrary course hath for a long time obtained," he does not say that it was *law*; and his learned editor, Mr. Serjt. Wilson, very strongly intimates that it was not, "being unwarranted by ancient usage." (2 Hale's P. C. 294, in notes). Foster takes the same view, and says, "It is not now a question, and I hope will it ever be a question again, whether in a capital case the Court may, in their discretion, discharge a jury, after evidence given and concluded on the part of the Crown, merely for want of sufficient evidence to convict, and in order to bring the prisoner to a second trial, when the Crown may be better prepared. This was done in the case of *Whitbread*; and it was certainly a most unjustifiable proceeding, but I hope it will never be drawn into example." (Foster's Crown Law, 30).

Since then, the thing has never been done until now, and the strongest case that has occurred in favour of the discharge of a jury in a criminal case is, that if, after indictment, arraignment, the jury charged, and evidence given, on a capital offence, one of the jury becomes incapable through illness of proceeding to verdict, the court of oyer and terminer may discharge the jury, and charge a fresh jury with the prisoner, and convict him. (*Rex v. Edwards*, 4 Taunt. 309; 3 Camp. 207).

But that, it will be observed, was on the ground of a natural, actual, physical necessity, amounting to an impossibility of continuing the trial with the same jury, and a necessity occurring in the course of the trial, before the jury had retired to consider their verdict; and, in the next place, the trial was continued *at once*, at the same sessions, without any further delay than was necessary. And it is well settled, that if a juror be taken ill during the trial of a prisoner for felony, the jury may be discharged, and the remaining eleven, together with a new juror, resworn to try the prisoner. (*Rex v. Scalbert*, 2 Leach's C. C. 620).

If a jurymen is taken so ill as to be incapable of attending through the trial, another jurymen returned in the panel may be added to the eleven; but the prisoner should be offered his challenges over again as to the eleven; the eleven should be sworn *de novo*, and the trial begin again. (*Rex v. Edwards*, Russ. & R. C. C. 234; 2 Leach's C. C. 621, note; 3 Camp. 207, note; 4 Taunt. 309).

So as to the illness of a prisoner during trial: if a prisoner indicted for a felony, with whom the jury are charged, be by sudden illness during the trial rendered incapable of remaining at the bar, the jury may be discharged from the trial of that indictment, and the prisoner, on his recovery, tried by another jury. (*Rex v. Stevenson*, 2 Leach's C. C. 546). And so, again, if at the assizes a prisoner is tried for a misdemeanour under the commission of gaol delivery, and during the trial becomes ill, and is obliged to be assisted out of court, the judge will discharge the jury; but if the prisoner recovers during the assize, he is to be tried during the same assize, the whole of the proceedings of the trial being commenced *de novo*. (*Rex v. Street*, 2 Car. & P. 413—Park). And there is no authority, even in the case of the necessary discharge of a jury, for the adjournment of the trial, unless that also is equally necessary. If there is a necessity for postponing the trial, arising from any ground known, there must, either in a civil or criminal case, be an application to the Court for the purpose, before the trial commences. And thus, a judge at the assizes may postpone a trial until the next assizes, if he finds the principal witness wholly incompetent to take an oath



from ignorance, and order the witness to be instructed in the meantime by a clergyman in the principles of his duty, and the nature and obligation of an oath. (*Ree v. White*, 1 Leach's C. C. 430). But if the trial cannot be postponed, except on an application on sufficient grounds, before the trial, a fortiori it cannot be adjourned in the course of the trial, without an overwhelming necessity, amounting to absolute impossibility of continuing the trial, which has begun, and ought to be continued to its conclusion.

In the present case, therefore, a two-fold necessity was to be made out—both for discharging the jury and adjourning the trial. In this case they both depend upon the same question, whether the near approach of the assizes in the next county is a sufficient reason for discharging the jury and interrupting the trial. For the mere fact that the jury had deliberated four hours could scarcely be considered sufficient to warrant their discharge. Even if it were, however, still would arise the question, whether there was any necessity for the adjournment of the trial. And this it seems almost impossible to make out in any other case than the illness of the prisoner. The illness of a witness during the trial would not be, for it would not be more than absence; and that was held over and over again not to warrant even an adjournment in a case of felony, unless for some short time, during which the jury might be kept locked up; for it is clear law, that in cases of felony the jury cannot separate; and if they do, it will avoid the verdict. Now, the illness of a juror has been held only to warrant the discharge of the jury and the continuance of the trial. Even in the case of illness of the prisoner, his trial is to be continued at the same assizes, if he recovers.

It is difficult to get over the language of the commission, which imposes on the commissioners a clear and positive duty to deliver the gaol. That is, those commissioners are to do it; and they have hardly a right to decline that duty and throw it on the next commission, if it be possible to discharge it. That it would be possible no one can doubt. Hawkins lays it down that the commissioner is not limited in time; and even if it were necessary that the judge should go, he could return when the other assizes were over. And even if the jury panel had by some mistake gone away, he could, under the Jury Act, direct the summoning of another.

Upon the whole, therefore, there seems strong reason to conclude that the conviction cannot be upheld. As the prisoner has been reprieved, for the very purpose of raising the point, of course, the Attorney-General will grant his fiat for a writ of error; and,

among lawyers at all events, no nonsense will be talked about a miscarriage of justice, arising from the release of a prisoner who has been convicted contrary to law, and who, upon the clearest principles of human and legal justice, is entitled to her discharge.

## JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Continued from p. 379).

The Registrar of the High Court of Admiralty of England has furnished a return shewing the proceedings of the court for the year ending the 31st December, 1864, in the same form as the return for the preceding year, with a separate statement of the proceedings in the office of the Marshal. It having been suggested that a return of the fee fund of the court, similar to that given for the Court of Chancery, might be furnished, the registrar has explained that, owing to the different arrangements in the two courts, it is not possible to make such return. In the Court of Chancery, money paid in by suitors remains in the custody of the court, which invests it, and receives the interest on the investments. On the other hand, in the Court of Admiralty, the registrar is not allowed to retain to the credit of his account at the Bank of England a larger sum at any time than 5000*l.*, and all moneys in excess of that sum are paid over by him to the Paymaster-General, who employs the amounts thus received in the public service. In the Court of Chancery, therefore, it is easy to return the amount realised from the investment of suitors' moneys, while in the Court of Admiralty it is not possible to do so. Again: in the Court of Chancery all moneys paid on account of court stamps are received and retained by the court, and thereout are paid the salaries of the officers and other expenses of the court. In the Court of Admiralty such moneys are paid to the Commissioners of Inland Revenue, and the salaries of the officers and other expenses are annually voted by Parliament.

In the return for 1864, the proceedings are classified under the heads given in the following abstract, in which the number of causes pending at the commencement of the year, the number instituted during the year, and the amount for which the causes were entered, are shewn under each head for 1864, in comparison with the corresponding numbers and amounts for the preceding year. In the number of causes instituted in 1864 it will be seen there is an increase of nine above the number in 1863. The amount at which causes were entered is nearly double, the increase being 98·3 per cent.

	1864.			1863.		
	<i>Causes pending at Commencement of Year.</i>	<i>Causes instituted.</i>	<i>Amount at which Causes were instituted.</i>	<i>Causes pending at Commencement of Year.</i>	<i>Causes instituted.</i>	<i>Amount at which Causes were instituted.</i>
Salvage . . . . .	26	77	£175,975	49	77	£124,751
Damage by collision . . . . .	64	219	340,030	72	199	391,300
Bottomry . . . . .	10	24	28,150	12	31	50,600
Actions for necessities supplied to foreign ships . . . . .	6	51	23,080	5	36	12,140
Towage . . . . .	1	14	2,020	1	15	2,720
Wages . . . . .	13	65	29,890	12	59	28,400
Pilotage . . . . .	—	3	450	—	1	200
Possession . . . . .	1	1	—	—	2	2,000
Other causes . . . . .	23	40	757,950	19	65	71,150
<b>Total . . . . .</b>	<b>144</b>	<b>494</b>		<b>170</b>	<b>485</b>	
	638		£1,355,545	655		£268,261

The average of the total numbers for the five years 1859 to 1863, inclusive, exceeds the total for 1864 by 682, or 6·9 per cent. The average of the total amount for those years is less than the total amount for 1864 by 672,284*l.*, or 49·5 per cent.

The number of caveat warrants entered in 1864 was 69; in 1863 the number was 67; in 1862, 59; in 1861, 52; in 1860, 41.

The caveat releases entered, and the appearances, both of which are set out in the return under each of the heads of salvage, &c., numbered in each year:—

In 1864. In 1863. In 1862. In 1861. In 1860.

Caveat re-					
leases . . . . .	56	29	26	36	54
Appearances . . . . .	396	375	358	383	371

The numbers of judgments and decrees are also given under each head. The total numbers, and the terms under which the judgments were made, in each of the years 1864 and 1863, with the average of the numbers for 1859-63, were—

	1864.	1863.	Average, 1859-63.
Final judgments in contested causes:			
For plaintiff . . . . .	99	115	109
For defendant . . . . .	8	390	34
Decrees in causes by default . . . . .			
Incidental decrees in contested causes . . . . .	16	39	46
Decrees "in poenam" causes . . . . .			
	145	193	189

In "in poenam" causes:—

	1864.	1863.	Average, 1859-63.
	£ s. d.	£ s. d.	£ s. d.
Proctors' or solicitors' bills submitted . . . . .	481 6 2	1,064 16 9	1,507 1 7
Amount disallowed . . . . .	65 14 0	200 1 9	427 8 0
Found due . . . . .	415 12 2	864 15 0	1,079 13 7
Agents' out-port charges:—			
Submitted . . . . .	97 14 6	255 16 0	153 6 2
Allowed . . . . .	52 1 1	79 12 6	106 12 2
Plaintiffs' costs in contested causes:—			
Proctors' or solicitors' bills submitted . . . . .	14,932 7 6	13,212 17 7	14,533 8 8
Disallowed . . . . .	3,272 9 6	2,976 8 0	3,153 15 11
Found due . . . . .	11,659 18 0	10,236 9 7	11,379 6 9
Agents' out-port charges:—			
Submitted . . . . .	4,643 11 6	4,220 8 6	4,153 12 5
Allowed as against defendants . . . . .	2,403 4 10	1,869 12 5	2,002 10 2
Defendants' costs in contested causes:—			
Proctors' or solicitors' bills submitted . . . . .	6,050 4 5	4,136 17 4	3,565 0 2
Disallowed . . . . .	1,528 14 9	1,100 14 6	934 9 6
Found due . . . . .	4,521 9 8	3,036 2 10	2,630 10 8
Agents' out-port charges:—			
Submitted . . . . .	1,617 4 0	1,734 10 4	1,194 7 2
Allowed as against plaintiffs . . . . .	846 1 6	908 7 9	539 17 9

The total amount of Admiralty proctors' costs was,—

	In 1864.	In 1863.	In 1862.	In 1861.
Submitted . . . . .	£558 4 4	£532 1 11	£390 17 8	£130 15 9
Disallowed . . . . .	5 17 10	26 1 8	1 7 4	0 15 0
Found due . . . . .	£552 6 6	£506 0 3	£389 10 4	£130 0 9

The total amount of costs and charges in each of the following years was,—

	1864.	1863.	1862.	1861.	1860.
Submitted . . . . .	£28,380 12 5	£25,157 18 5	£26,656 2 1	£25,046 11 10	£20,511 8 4
Found due . . . . .	20,450 13 9	17,501 0 4	18,893 5 11	18,551 5 2	15,199 8 2

The total number of instruments prepared in the registry in 1864 was 1206. The numbers of each description of instrument under each of the headings of salvage, damage by collision, &c., are given in the tables. The instruments executed are stated under the return of the proceedings in the office of the Marshal.

The total number of motions and of summonses heard, the number under each head being given in the table for 1864, was for each year:—

	1864.	1863.	1862.	1861.	1860.
Motions in court . . . . .	108	141	116	107	125
" chambers . . . . .	298	249	182	129	46
Summonses heard . . . . .	—	1	24	54	72
	406	391	322	290	243

Under references to registrar and merchants, 53 causes are given, as heard and reported on by the registrar in 1864; in 1863 the number was 38; in 1862 it was 52; in 1861, 37.

The total amount of the accounts submitted for investigation in 1864 was 109,789*l.* 5*s.* 10*d.*, of which 14,683*l.* 6*s.* was disallowed, leaving 95,105*l.* 19*s.* 10*d.*, as the amount found due; in 1863 these amounts were respectively 43,165*l.* 8*s.* 1*d.* submitted; 15,457*l.* 13*s.* 1*d.* disallowed, and 27,707*l.* 15*s.* found due.

The total number of bills taxed in 1864 was 229, the number under each head being distinguished in the table; in 1863 the number was 239; in 1862 it was 202; in 1861, 242; in 1860, 212.

The total amount of costs, the amount under each of the heads of salvage, damage by collision, bottomry, &c., being distinguished in the tables, was as follows for each of the years 1864 and 1863, with the average of the five years, 1859-63:—

The following are the numbers prepared in the registry in 1864, in comparison with the numbers for 1863, and the average of the numbers for the five years, 1859-63:—

	1864.	1863.	Average, 1859-63.
Bail bonds prepared in the registry.	225	234	261
Affidavits of justification	104	119	131
Other instruments prepared	877	977	982

The amounts of the balances of suitors' and other moneys in hand at the beginning and end of the year,

	1864.	1863.	Average, 1859-63.
Balances in hand at the beginning of the year	£22,624 14 8	£23,587 14 10	£27,750 14 1
Received during the year	38,926 8 1	57,179 16 1	57,070 9 11
Paid during the year	48,723 11 8	58,142 16 3	58,534 0 0
Remaining in hand at the end of the year	12,827 11 1	22,624 14 8	26,284 17 8

The total sum realised by the Commissioners of Inland Revenue on account of Admiralty Court stamps during the year 1864 was 8597l. 5s. 7d. The amount in 1863 was 9139l. 4s. 9d. The average of the five years, 1859-1863, is 8771l. 3s. 9d.

Under the head of general business, it is stated that the court sat on 102 days, and that the registrar and merchants sat on 28 days. In 1863, the court sat on 118 days; the registrar and merchants on 27. In 1862, the sittings were, of the court on 89 days; of the registrar and merchants on 23 days. In 1861, the sittings were, respectively, on 87 and on 25 days; in 1860, on 60 and on 27 days.

In 1864, one commission was inrolled in the registry appointing Lords of the Admiralty, and two commissions were appointed to administer oaths.

Eleven claims were investigated by the registrar in respect of seamen volunteering into the Royal Navy,

and the amounts received and paid during the year, are shewn under different heads in the table. In the balances the amounts remaining in the hands of the Paymaster-General and in the hands of the registrar are distinguished; in the amount received during the year, the sum received on account of the amount voted by Parliament for salaries and other expenses is shewn, and underpaid during the year; the amount for salaries and other expenses of office is stated separately.

The following were the total amounts for each of the years 1864 and 1863, with the average of the totals for the five years, 1859 to 1863, inclusive:—

under the 17 & 18 Vict. c. 104. Of these, nine were allowed in full; one was varied or altered; and one was disallowed in toto. In the awards appealed against to the judge, the total amount claimed for compensation was 170l. 3s. 4d., of which 7l. 10s. 4d. was disallowed, leaving 162l. 13s. as the amount found due. Seventeen powers of attorney were registered under the Navy Prize Agents Act, 1863.

(To be continued).

**LEGAL APPOINTMENTS.**—The Lord Chancellor has appointed Josiah William Smith, Q. C., to be Judge of the County Court, No. 27, in the place of Uvedale Corbett, Esq., who has resigned.—W. M. Hindmarch, Q. C., has been appointed Recorder for the city of York, in the room of C. H. Elsley, Esq., deceased.

### FREDERICK CHIFFERIEL,

ESTABLISHED 1819,

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## THE JURIST.

LONDON, OCTOBER 21, 1865.

LEARNED men now and then have some very odd vagaries; and the authors of a useful and well-executed treatise—"On the Equitable Jurisdiction of the County Courts," and "The Principles on which such Jurisdiction is exercised, and the Practice by which it is governed," have seriously advanced the proposition, that this new experiment of the Legislature, is not confined to giving jurisdiction to the county courts, but has at once, and without waiting, stripped the Court of Chancery of its powers to the exact extent it has given equitable powers to the county courts. In other words, that the new statute (28 & 29 Vict. c. 99) has taken away from the superior court what it has given to the county courts. Sect. 1 enacts, that the county courts shall have and exercise all the power and authority of the High Court of Chancery in the suits and matters thereafter mentioned; and then proceeds to enumerate and classify a great number and variety of matters, including, within certain limits there specified, suits by creditors, legatees, &c.; suits for the execution of trusts; suits for foreclosure or redemption; specific performance; proceedings under the Trustees Relief Act, or under the Trustees Acts; proceedings relating to the maintenance of infants; suits for the dissolution or winding up of partnerships; proceedings for orders in the nature of injunctions, &c.; and then follows sect. 2, in these terms:—"In all such suits or matters the judge of a county court shall, in addition to the powers and authorities now possessed by him, have all the powers and authorities, for the purposes of this act, of a judge of the High Court of Chancery; and the treasurer, registrar, and high bailiff shall, in all matters in which the county court has jurisdiction under this act, discharge any duties which an officer of the Court of Chancery can discharge, either under the order of a judge of such court or the practice thereof, and all officers of the county courts shall, in discharging such duties, conform to any rules and orders to be framed as hereinafter provided." Then by sect. 3, any one of the Vice-Chancellors, on application of any party to any suit or matter pending in the county court, shall have power, if he shall think fit, to transfer the same to the Court of Chancery; and by sect. 18 a right of appeal is given.

And in the treatise referred to, it is vehemently argued, that as to all the suits and proceedings enumerated in sect. 1, the suitor has no option (if he proceeds at all) but to commence proceedings in the county court, and that the county court has the sole and exclusive jurisdiction to entertain them, subject only to their being transferred by the order of a Vice-Chancellor under sect. 3, or being made the subject of appeal under sect. 18.

We must, in justice to the learned authors, refer

\* By Henry Frederick Gibbons, LL.B., Cantab., Barrister at Law, and William Charles Harvey, B.A., Cantab., Barrister at Law.

our readers to their observations on this point in the treatise itself, as it is not possible within the limits of this article to collect them all and set them out at length. But their argument in the main appears to be, that as the act says it gives "all" the power and authority of the Court of Chancery to the county courts, the Court of Chancery can have none left, because if you take "all" nothing remains. The consequences are to be mitigated by special applications to a Vice-Chancellor under sect. 3, to transfer suits pending. Stress is also laid on sects. 3 and 4 of the 9 & 10 Vict. c. 95, the original County Courts Act, as supporting the construction sought to be put on this last act. Now, the 9 & 10 Vict. c. 95, is intitled "An Act for the Recovery of Small Debts in England and Wales," and sect. 3 says, that every court to be holden under that act shall have all the jurisdiction and powers of the old county court, for the recovery of debts and demands as altered by that act; and sect. 4, that for all the purposes except those which shall be within the jurisdiction of the courts holden under that act, the county court shall be holden as if the act had not passed. But these sections, if they have any application by way of argument at all, make against the view contended for, for they go to shew that when jurisdiction is taken away, negative words are used; for the two sections, read together, contain negative words, shewing what jurisdiction is taken away, and what remains; for greater caution, and to make the whole thing complete, words of preservation being also used. And this brings us to the well-known rule of construction, which has prevailed from the earliest times, that there must be negative words to take away jurisdiction. The rule is stated in 2 Inst. 447. By stat. 13 Edw. 1, c. 39, jurisdiction was given to justices of assize to hear complaints as to the articles mentioned in that act, "*et habeant iudicarii ad assisas capiendas assignati cum in comitatum venerint potestatem audiendi querimonias singulorum conque- rentium quoad articulos in isto statuto contentos et justitiam in forma predicta exhibendi*." And justices assigned to take assizes when they come into the shire, shall have power to hear the complaints of all complainants as to the articles mentioned in this statute, and administer justice in form aforesaid. "This clause," says Lord Coke, "is in the affirmative, and, therefore, the party grieved may take his remedy in this act, either before the justices of assize, or in any other court that has cognisance thereof; for justices of assize could not have power in this case, without express words; and, therefore, if the meaning be to exclude other judges than those that be named, there must be words negative. Thus, "and not in any other court, nor before any other judges." (2 Inst. 447). And in the last edition of Story's Equity Jurisprudence, 527, s. 542, is as follows:—"The jurisdiction of courts of equity to superintend the administration of assets, and decree a distribution of the residue after payment of all debts and charges, among the parties entitled either as legatees or as distributees, does not seem to have been thoroughly established until near the close of the reign of Charles II. The objection was then made, that the spiritual courts had full authority

under the Statute of Distributions to decree a distribution of the residue. But upon a demurrer filed to a bill for a distribution, it was held by the Lord Chancellor that, there being no negative words in the act of Parliament (the Statute of Distributions), the jurisdiction of the Court of Chancery was not taken away; for the remedy in Chancery was more complete and effectual than that in the spiritual courts; or, to use the language of the Court upon that occasion, the spiritual court in that case had but a lame jurisdiction; referring to *Mathews v. Newby* (1 Vern. 133); *Howard v. Howard* (Id. 134); and a number of other cases, English and American. There is then abundance of authority that negative words must be used to take away jurisdiction; and though the term "lame jurisdiction" has no very logical application to the real ground on which *Mathews v. Newby* was decided; and though such language cannot by any means be applied to the county courts, which are justly acknowledged to be institutions of great utility, dealing with a multiplicity of affairs, yet we may modify the figure, and say that there is an antecedent improbability that the Legislature would at once deprive suitors in equity of all option, and force them to rely exclusively on the county courts in all the matters enumerated in sect. 1, before those courts have had any time for the use and exercise of their new equitable limbs. But leaving conjecture as to what was probable, and recurring to the statute itself, we may observe that, from the beginning to the end of the act, there is not one single word negating the jurisdiction of the superior court.

The declared object of the act is to confer on the county courts a limited jurisdiction in equity, and the manifest intention is that of giving and conferring, and not of taking away from any; and not only are there no negative words, but the frame of the act and its language affirmatively implies the continuing jurisdiction of the Court of Chancery. By sect. 3 the county court judge is to have all the powers and authorities of "a judge" of the Court of Chancery; he is to have the same powers just as the officers of the county court are to have the same powers as the officers of the Court of Chancery; and all this implies continuance. But our readers may exclaim, "Why do you labour so; the point is clear?" And we will conclude with this one observation—that the utility of the treatise in question, as a work of practice and reference, is not in the least interfered with by the perhaps patriotic, but certainly rather extravagant, attempt to give exclusive power to the newly-endowed tribunals.

#### JUDICIAL STATISTICS, 1864—CIVIL SIDE.

(Concluded from p. 404).

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The amounts ordered for distribution were, in respect of slave vessels, 43,356*l.* 18*s.* 5*d.*, in 69 cases; for salvage services, 284*l.* 15*s.*, in two cases; and for capture and destruction of pirates, &c., 1500*l.* 5*s.* 2*d.*, in three cases.

The amounts ordered for distribution for the naval portion of the Parliamentary grant for stores captured at Kertch and Yenakali in 1855 was 62,501*l.* 1*s.* 9*d.*

The return of the proceedings in the office of the Marshal of the High Court of Admiralty shews, under the different heads of salvage, damage, bottomry, necessities, towage, wages, pilotage, restraint, possession, and other causes, the number of instruments executed, viz. warrants; citation in rem; citations in personam; monitions for different purposes; attachments; subpoenas; decrees of possession; releases; commissions of unlivery of cargo, of appraisement, of appraisement and sale of ships, of appraisement and sale of cargoes; the total number of instruments executed having been 625.

The return shews also the number of arrests made, viz. of ships; of ships and cargoes; of ships and freights; of ships, cargoes, and freights; of cargoes and freights; of cargoes only; of freights only; of rigging, &c.; of proceeds in registry; the total number of arrests made being 268.

There were 175 notices of bail, and 172 reports as to the sufficiency of bail; the total amount of bail reported being 216,297*l.* 1*s.* 5*d.*

The amount of proceeds paid into the registry was, of ships sold, 13,380*l.*; of cargoes sold, 469*l.* 12*s.* 9*d.*

A summary of the proceedings in her Majesty's Court for Divorce and Matrimonial Causes for the year ended the 31st December, 1864, has been furnished by the senior registrar of the Court in the usual form.

The following table shews the proceedings for 1864, as returned by the chief registrar, in comparison with the proceedings in 1863, and with the average of the numbers under each head for the five years from 1858, the first year of the operation of the court, to 1862, inclusive:—

	1864.	1863.	Average, 1858-62.
<b>Petitions filed:</b>			
In formâ pauperis . . . . .	1	9	3
For nullity of marriage . . . . .	15	7	5
For dissolution of marriage . . . . .	231	255	210
For judicial separation . . . . .	66	43	64
For restitution of conjugal rights . . . . .	17	9	12
For jactitation of marriage . . . . .	—	—	—
For declaratory act . . . . .	2	—	2
	—332	—323	—296
<b>Applications for protection of property . . . . .</b>			
	8	12	24
<b>Petitions for alimony:</b>			
Pendente lite . . . . .	84	85	70
Permanent . . . . .	1	4	3
Citations issued . . . . .	488	468	414
Appearances entered . . . . .	248	216	205
Answers filed . . . . .	230	237	189
Replies by petitioner . . . . .	134	124	79
Rejoinders by respondent . . . . .	10	4	14
Motions . . . . .	830	816	611
Summonses . . . . .	755	701	534
<b>Causes tried before full court:</b>			
On oral evidence . . . . .	—	7	—
On affidavit . . . . .	—	—	—
<b>Causes tried before full court and jury . . . . .</b>			
	—	—	—



## Causes tried before the Judge

Ordinary :			
On oral evidence . . .	143	172	—
On affidavit . . .	—	—	—
Causes tried before the Judge			
Ordinary and jury . . .	48	58	—
Total causes tried . . .	—191	—237	—219

## Judgments given :

By the full court . . .	5	7	70
By the Judge Ordinary . . .	143	230	122
Applications for new trial . . .	2	4	3
Appeals to the House of Lords . . .	—	—	—
Appeals from Judge Ordinary to the full court . . .	—	—	—

The total number of petitions filed was higher, it will be seen, than the average. It is higher than the number for any year, with the exception of 1858. The number of petitions for the dissolution of marriage also is higher than the average. It is higher than the number for any year excepting 1863.

The total number of petitions filed since the establishment of the court is 2137; the total number of judgments given is 1207.

The amount of fees received in each year has been :—

1864.	1863.	1862.	1861.	1860.	1859.	1858.
£2968	£2508	£2439	£2561	£2489	£2411	£1549

The Court of Probate, established under a statute of the same year (20 & 21 Vict. c. 77) as the Court for Divorce and Matrimonial Causes, exercises an exclusive jurisdiction in all matters relating to the grant or revocation of probate of wills and letters of administration.

Of the proceedings in this court in the year 1864, the senior registrar has furnished a return similar to the returns for previous years; and in the following table the proceedings are shewn, under the heads given in the return, for each of the years 1864 and 1863, with the average of the numbers under each head for the five years 1858–1863:—

	1864.	1863.	Average, 1858–62.
Total number of probates granted	9,445	8,496	8,251
„ administrations . . .	4,807	4,383	4,406
„ caveats . . .	1,008	910	926
„ appearances . . .	285	226	235
„ motions . . .	591	534	563
„ petitions . . .	—	2	5
„ causes . . .	483	418	393
Summonses . . .	605	441	451
Trials by special jury . . .	9	11	11
Trials by common jury . . .	7	11	10
Causes heard by judge only . . .	33	25	23
Probates and administrations granted :			
On hearing of causes . . .	49	40	41
On motion . . .	245	209	283
On summonses . . .	3	5	19
Causes in progress at the end of the year . . .	102	102	112
Causes ready for hearing and left unheard . . .	10	7	7
Questions referred to courts of law . . .	6	9	8
Notices of appeal to the House of Lords . . .	—	2	—
Revocations of probate or administration . . .	36	50	34
Total amount of fees in court and contentious business . . .	£1,891	£1,614	£2,068
Taxed costs . . .	£7,602	£5,185	£10,019

The majority of the causes, it is stated by the senior registrar, were disposed of by motions in court—3 by

orders on summonses, and 92 by final orders on summonses. The total amount of stamps issued in London for probate and administration was 808,169*l.* for 1864; for the preceding year the amount was 740,873*l.*

The power of the district registrars extends to the grant of probates and letters of administration in common form, that is, where there is no contention to the grant; in disputed cases the grant can be made only on the decision of the county court. The total of the proceedings in the whole of the forty district registries, and the total amount of fees and of stamps, were as follows for each of the years 1864 and 1863. The average of the five years, 1858–62, is added :—

	1864.	1863.	Average, 1858–62.
Number granted in common form :			
Probates . . .	14,882	14,268	13,438
Letters of administration . . .	5,276	5,056	5,023
Letters of administration with will annexed . . .	980	795	717
Number granted under direction of judge :			
Probate . . .	17	14	13
Letters of administration . . .	6	3	5
Letters of administration with will annexed . . .	2	1	2
Number of caveats against grants of probate and letters of administration . . .	311	246	301
Number refused under direction of judge . . .	1	3	2
Number granted on decrees of county courts :			
Probates . . .	2	2	1
Letters of administration . . .	—	—	—
Number recalled or varied on decrees of county courts . . .	—	—	—
Total amount of fees received . . .	£63,290	£60,122	£52,264
Amount of stamp duty for probate and administration . . .	£567,939	£549,415	£462,898

The number of suits in the Ecclesiastical Courts (exclusive of Faculties) for the year 1864 shews a further decrease. For 1863 the number was 22; for the past year it is only 15. In 1862 there were 31 suits; in 1861, 36; in 1860, 35; and in 1859, 28: the returns extending no further. Of the 15 suits in 1864, six were in the Arches Court of Canterbury, one in the Arches Court of York, four were in the Diocesan Court of Bath and Wells, one in the Diocesan Court of London, one at Rochester, and two at Llandaff.

The proceedings in 1864 were as follows:—

In matters of church rates . . .	9
For becoming a surrogate . . .	2
Against institution to benefice . . .	1
Deprivation of benefice . . .	2
To answer articles, &c. . .	1

The results of the proceedings were—in one suit an interlocutory decree; in two cases the suits were agreed; in one the defendant was admonished; in one suspended; in two cases appointments were made; in seven of the suits the proceedings were still pending, and one was appealed against.

The other proceedings before the Courts were on suits for faculties, of which there were 95, as follows:—

For erecting, altering, restoring, or rebuilding churches . . .	78
For pew seats . . .	1
For building schoolhouses in churchyards . . .	2
For removing buildings on a glebe . . .	1
For tablets, gravestones, or vaults . . .	4
For removal of bodies . . .	5
For other objects . . .	4

In 91 cases faculties were granted; in one case refused; three were in progress.

In 1863 there were proceedings in 82 cases on suits for faculties; in 1862, in 77; in 1861, in 95; in 1860, in 81; in 1859, in 87.

The amount of the court fees in 1864 was 320*l.*; in 1863 and 1862, 300*l.*; in 1861, 294*l.*; in 1860, 288*l.*; in 1859, 281*l.*

A return of all appeals and proceedings before the

	1864.	1863.	1862.	1861.	1860.	1859.
Number of appeals entered . . . . .	75	60	51	78	67	50
Dismissed for non-prosecution . . . . .	8	8	14	16	6	7
Heard and determined . . . . .	40	40	48	45	42	32
Judgments affirmed . . . . .	31	26	23	24	25	16
" varied . . . . .	1	1	4	6	2	—
" reversed . . . . .	13	13	21	15	15	16
Appeals (lodged since 1st January, 1860) which remained for hearing . . . . .	114	90	94	99	81	66

In 10 of the appeals heard and determined in 1864, no costs were given; in 30, costs were given. These numbers were the same in 1863.

The total amount of costs taxed (in 28 appeals in which the costs on one side only were taxed by the registrar) was 6484*l.* 7*s.* 9*d.*, giving an average of 231*l.* 11*s.* 8*d.* in each case. In the preceding year the average was 263*l.* 10*s.* 6*d.* for each case.

In 1864 four applications were lodged for the extension or confirming of letters-patent, two of which were granted. The total amount of Council Office fees on patent cases was 38*l.* 5*s.* 0*d.* During the year one matter was specially referred.

The amount of Council Office fees on appeals was 732*l.* 18*s.* 6*d.*; in 1863 the amount was 824*l.* 14*s.* 6*d.*; in 1862 it was 1381*l.* 11*s.* 0*d.*

In addition to the foregoing business, the Lords of the Judicial Committee of Privy Council heard during the year 19 petitions in appeals (interlocutory) argued by counsel.

The return furnished in the usual form by the Clerk of the Parliaments shews the judicial proceedings of the House of Lords during the session of 1864.

In the following abstract, the number of cases from each of the courts named is stated, in comparison with the number for the preceding year, and with the average of the numbers for the five years, 1858 to 1862, inclusive:—

	1864.	1863.	Average, 1858-62.
From the Court of Chancery—			
England . . . . .	11	15	18
Ireland . . . . .	4	4	7
From the Court of Exchequer—			
England . . . . .	3	—	—
From the Court of Exchequer Chamber—			
England . . . . .	11	5	9
Ireland . . . . .	—	—	2
From the Court of Session—			
Scotland . . . . .	33	23	26
From the Court of Probate—			
England . . . . .	1	—	2
Ireland . . . . .	—	—	—
From the Court of Divorce—			
England . . . . .	1	3	2
Total . . . . .	64	50	66

Of the 64 appeals and causes in error presented in 1864, as above mentioned, 15 were in matters of real property, 32 in matters of personal property, 5 in

Judicial Committee of the Privy Council in the year 1864, made in the usual form by the registrar of the Privy Council, shews the number of appeals and proceedings, and the results, under each of the heads of the Admiralty Court, Ecclesiastical Courts, Channel Islands and Isle of Man, Colonies, and India.

The numbers of appeals entered, the numbers dismissed for non-prosecution, and the numbers heard and determined, with the judgments, were as follows in 1864 and in each of the five preceding years:—

matters real and personal, and 12 miscellaneous; 10 cases were withdrawn; 15 were dismissed for want of prosecution; 27 judgments were delivered, including causes heard in the previous session, and standing over for judgment: 10 of the causes were simply affirmed; 5 were affirmed with declaration or variation; 3 were dismissed; 1 was simply reversed; 4 were reversed with declaration, direction, or remit.

The total number of causes heard in 1864 was 36, including causes standing over for judgment, and heard in part.

The number of causes remaining for hearing at the end of the session of 1864 was 42.

In the preceding year the number of causes heard was 25, the number which remained for hearing was 31; in 1862, the number heard was 30, the number which remained for hearing was 35; in 1861, 26; in 1860, 27; in 1859 and 1858, each, 49 causes remained for hearing at the end of the session.

The total amount of fees in 1864 was 1927*l.* 14*s.* 6*d.*; in 1863 the amount was 1449*l.* 2*s.* 0*d.*; the average of the five preceding years is 2114*l.* 13*s.* 8*d.*

Secretary of State's Office, F. S. LESLIE.  
Whitehall, 17th May, 1865.

### Court Papers.

#### NISI PRIUS SITTINGS, IN AND AFTER MICHAELMAS TERM, 1865.

##### Court of Queen's Bench.

###### In Term.

MIDDLESEX.	LONDON.
1st sitting, Friday . . . Nov. 3	There will not be any sittings during term in London.
2nd sitting, Friday . . . . . 10	
3rd sitting, Friday . . . . . 17	

###### After Term.

Monday . . . . . Nov. 27	Saturday . . . . . Dec. 9
--------------------------	---------------------------

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

##### Court of Common Pleas.

###### In Term.

MIDDLESEX.	LONDON.
Friday . . . . . Nov. 3	The Court will not sit in London during term.
Friday . . . . . 10	
Friday . . . . . 17	

###### After Term.

Monday . . . . . Nov. 27	Friday . . . . . Dec. 8
--------------------------	-------------------------

The Court will sit during and after term at ten o'clock.

**Exchequer of Pleas.***In Term.***MIDDLESEX.**

1st sitting, Friday .. Nov. 3  
2nd sitting, Friday ..... 10  
3rd sitting, Friday ..... 17

**LONDON.**

There will not be any sittings  
during term in London.

*After Term.*

Monday ..... Nov. 27 | Friday ..... Dec. 8

The Court will sit in and after term at ten o'clock.

The Court will sit in Middlesex, at Nisi Prius, in term, by adjournment from day to day until the causes entered for the respective Middlesex Sittings are disposed of.

**REPORTS.**—The more accomplished the lawyer, the less he needs, and the less he does, trouble himself with cases in point, for he can draw from his own stores, and reason much better for himself. But the little lawyer, who has no stores of his own, and cannot so reason, and who, like the Flying Dutchman, is always at sea, always running against the wind, and always offering papers perilous to handle, wants reports to hitch himself out of the perilous circle; why not let him have some? The walrus is not unwieldy in his own element. It is only ambition to climb that makes him so, and exposes him to shot at the very moment of finding his voice. The labour of search is not yet quite overwhelming to those who are willing to give their whole time and strength to it. The earlier reports, those conventional old cherubs, all head and dead, *векныя амерныя карныя*, speak the little they do know, with the voice and utterance of the later, and both together find a ready refuge under the wing of that most eydent and benevolent scold, the text writer. Some of the former, indeed, like the Dodo, have nothing of them left but an empty skull, a claw, and an apocryphal picture. Others, no more than a verdict, they talked folly, “ante nos nostra dixerunt,” and perished justly. An old black letter in these days steps forward to state his rights and wrongs, more like a sexton shewing a crypt than a philosopher, and with all the wailing timidity of the mangled Deiphobus, and like him, too, snubbed, rejected, and all forlorn, soon sighs forth his submission, and leaves the field to his more showy successor.

“Ne laudatissime sævi;

Discedam, explebo numerum, reddarque tenebris;  
I, decus, i, nostrum, melioribus utere fatis.”

As to the showy successors indeed—but then it is manifest that it must be as easy to talk nothing under one system as under another. Will a code, will anything blunt the graver? Will anything free us from our blue and buff button holders? We perish from anomalous competition, an infinite infinitive scribere. We drag for ever a salt imbelluous sea, in which nothing can sink, nothing can live, over which neither eagle or linnet can fly. We walk through an enchanted wood, with a calling voice from every twig. We tax our memories to the disabling of our judgments, and, of right or by courtesy, are good lawyers now only because there have been good lawyers before us. Our reporters, who, being the sons of Mnemosyne or memory, must be brothers of the Muses, are like the stars in the heavens; the longer you gaze the more of them there are. You may divide the square root of their sum total by any unit you like, and read the riot act effectively to the quotient. And then they are as restless as *Ovies*, always starting and nibbling at something or another. In fact, they set round ecstatically, like children at a feast, who eat of a thing, not because they like it, but from jealousy, because they see their little playfellows doing so; and we, the

tremulous humbugs that we are, press them on, under a certain hidden compulsion, which might be love of the science if it were not something else. Yet do we pine for the luxury of kind regrets, for the days of the Lord Felix, the most uxorious of judges, who had but one reporter, as you may any day see in Hogarth's picture of Drusilla setting her cap at the bar, and even he is not taking it down. Surely, they might be practised upon by promises or something, and got out of the way, except a few for authorised reporters, steady, able, accurate, and judicious fellows—

“Doctos ego quos et amicos

Prudens prætereo, metuens alaspabile bellum—”

with vested interests, good pay, inattentive minds, and an inveterate habit of losing their notes. This is only too much of a good thing “mole ruentis suæ,” for if law be a science, unless we are to be left to the shaky notions of the first comer, where somebody is always coming, we must have reporters, only we do not want to have a lot of boys flogging the same top. It seems odd to require the judge to declare the law and its reasons, and not provide for recording such declaration. I think this must have been our *Astec* worship; we neglected the learning and wisdom of the judge for the stunted little idiot of a postea. However, the reporter came, as a great man always does come, when he was wanted, and did what was wanted; and all he wants in turn, is to be relieved from a competition which tends to no improvement, from all publisher's difficulties, and thus be enabled to do what he so ardently desires, namely, to give us his reports, at cost price, by the weight, at two-pence a pound. Then, is not this a case for obstructive reform?—*Thoughts on Legal Discontent.* 1855.

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ALFRED LOWE, Secretary.

17 and 18, Cornhill, London, Oct. 18, 1865.

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By order of the Court of Directors,

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LONDON, OCTOBER 28, 1865.

Or late years the old idea of the Marquis of Worcester, of running steam-engines on ordinary roads, has again attracted much attention, and exercised the ingenuity of our engineers. This idea had slumbered for many years, both because of the imperfections of machinery, which rendered it practically a failure, and because of the railroads satisfying the requirements of the public in a great measure. The instituting, however, a system of steam agriculture by means of steam-engines, for thrashing, &c., which, from the engine being much too expensive to be remunerative on one farm, necessitated the transfer of unusually heavy loads from one place to another by the ordinary roads (those very loads themselves containing a locomotive power far exceeding horses, if only properly applied), revived the old first experiments in locomotion by steam power, and set our engineers again at work in devising machinery, by which the steam locomotive might be effectually brought to work over roads not originally intended for or adapted to its use. At last, as might be expected, the want having really accrued, and the engineers being seriously in earnest, the want was supplied, the engineers were successful, and the required engine was produced. Having, however, produced their engine, a fresh difficulty occurred to oppose our now victorious mechanists. They had got their engine, but found practically they had not got their roads. The whole public were up in arms. The notion of any one running a steam-engine without any check as to speed, noise, or other man-endangering or horse-appalling concomitants, but the fears of the owners and drivers of the new monster, and their responsibilities to the injured and frightened public, was not to be borne. And actions and indictments were threatened, and such opposition manifested to such a state of things, as brought all hopes of this use of locomotive power to a standstill. Farther than this, there were such things as general and local turnpike acts, which stood seriously in the way. The general turnpike and highway acts, and many local turnpike acts, contained no regulations for the use of such locomotives, and gave no authority for the levying tolls in respect of them and the waggons which they might draw. Certain other local turnpike acts authorised a levying of tolls which might, in fact, be prohibitory. And the weighing clauses of the general Turnpike Act had not been framed in anticipation of traffic by locomotives, and were ill-adapted to the profitable carry-

ing of goods or levying just tolls on waggons drawn by them. It became both necessary and proper that there should be some general provisions for the safety of the public, for the preservation of the roads from damage, and for the levying of reasonable and proper tolls, provisions on the one hand for the protection of the public, and on the other for the help of the proprietors of locomotives; and in the year 1861 an act was passed with these objects—an act, however, which was so imperfect, that in the last session of Parliament another act was passed in order to put matters on a better footing. The importance of the alterations made by this new act has drawn our attention to the subject, and we propose to give a short sketch of the provisions of these statutes, as there is a very natural anxiety on the part of those in the habit of riding or driving along our roads, with respect to the use of these engines (which at present, at all events, are unusual and startling objects), and it may be a comfort to many persons to know what they may expect when such a machine is driven in accordance with the acts of Parliament, and what they may threaten and require if it is not.

By the first of these statutes, the 24 & 25 Vict. c. 70, the following provisions were made:—

And first, let us take those which relate to tolls and the protection of the roads. They may, in short, be thus stated—All claims of local and general turnpike road or public bridge acts, respecting tolls which might differ from those in the statute, are repealed, and only those mentioned in private road or bridge acts, and the Commercial Roads Continuation Act, 1849, left untouched; and the following system of charging is instituted:—The locomotive itself is to be charged for every two tons, or fractional part thereof, the same toll as would be charged per horse drawing a waggon with wheels of the same width by the acts in force; the width of the wheels, however, is to be immaterial where the acts in force do not take it into account; and if a shoe be used, the width of the shoe is to be the width taken, and the tolls are to be demanded as often as by the acts in force they would be demanded in case of an ordinary waggon. Every waggon drawn by the locomotive is not to be charged per each pair of wheels more than the toll payable for two horses drawing a waggon with the same width of wheels; and there are similar provisions as to fractions of tolls, immateriality of width of wheels, and frequency of payment, as in the case of locomotives; and both in the case of the locomotive and the waggons, if the wheels be cylindrical, within the 3 Geo. 4, c. 126, s. 9, one-half more is to be charged. Every locomotive under three tons' weight, and drawing no waggon, is to have wheels three inches wide, with an increase of an inch per ton, or its fractional part; every locomotive, if drawing a waggon, is to have nine-inch wheels; no locomotive (except as afterwards provided) is to be more than seven feet wide, or twelve tons in weight (this provision is altered by the later act); the wheels of every locomotive are to be cylindrical and smooth-soled, or have shoes nine inches wide; the owner is to be liable to a 5*l.* penalty for infringing these provisions. But on application to the lord mayor, the chief



magistrate in Scotch boroughs, corporations, commissioners, trustees, and surveyors of roads, may give leave to use within their districts wider and heavier engines, on such conditions as they think desirable; such permission, however, in case of the surveyor of highways in England, is not to be effectual till approved of by the justices in petty sessions.

Waggons not having cylindrical wheels must not carry more than is authorised by the general Turnpike Act; waggons having such wheels must not carry above their own weight more than one ton and a half per pair of wheels, unless the wheels or shoes are four inches broad; than two tons, unless six inches; than three tons, unless eight inches; half this for a single wheel; and in no case more than four tons per pair of wheels. An allowance of one-sixth more is made if there be springs; and these provisions as to weight are not to apply to waggons carrying one tree, stone, &c.

No locomotive is to go over any suspension bridge at all, nor over any other bridge on which the person liable to repair it puts a notice that it is insufficient, without obtaining his consent; and if a dispute arise as to the sufficiency of the bridge, then an officer may be sent down by one of the Secretaries of State to settle the matter.

If any bridge is damaged by a locomotive, or wagon drawn by it, the persons interested in the bridge, or water, or railway it crosses, are not to be liable to repair it, or to compensate any person for any interruption or delay which may ensue, but the owners or persons in charge of the locomotive are to repair the bridge to the satisfaction of such persons, and reimburse them and those who have been interrupted or delayed by the accident for all damage from the interruption and delay; such damage to be recoverable by action.

The materials carried are to be favoured by the same exemptions as in ordinary cases.

Secondly, as respects the protection partly of the roads, partly of the public, a provision (now repealed) gave power to the Secretaries of State to prohibit the use of locomotives, or any particular kind thereof, in any place, if they thought it too destructive to the roads, or dangerous or inconvenient to the public.

Thirdly, as respects the protection of the public, it is provided, that every locomotive must consume its own smoke, or the person using it becomes liable to a penalty of 5*l.* per day. And there were also provisions (now as we shall see repealed), that there should be two persons to look after the locomotive, and an additional one to look after the waggons, if more than two, and that there should be a light on each side and one in front of the locomotive from an hour after sunset to an hour before sunrise, under a penalty of 5*l.*, and that the speed should never exceed ten miles per hour, and on going through a city, town, or village, be reduced to five, the offender, if not owner, to be liable to a 5*l.*, and, if owner, to a 10*l.* penalty.

Lastly, the name of the owner and weight of the locomotive is to be fixed on the locomotive, or the owner is liable to a penalty of 5*l.*; and if he fraudu-

lently affixes an incorrect notice, he is liable to one of 10*l.*

The provisions of general and local road acts are to apply, as far as practicable, to the case of locomotives; but even if the act be complied with, those using the engine are to be as liable to an action for a private, and an indictment for a public nuisance, as if the act had not passed; and the act (this is now altered) was only to apply to Great Britain.

So the law remained till last session, when the stat. 28 & 29 Vict. c. 83, was passed, and made the following alterations:—

It provides, that engines nine feet wide and fourteen tons in weight may be used, if the wheels were constructed according to the old act, and that such engine is to be used, subject to the provisions in the 3rd section of the old act, as to the use of locomotives seven feet wide and twelve tons in weight.

A fresh provision is made as to the notice (without repealing the old one), which enacts, that the name and residence of the owner shall be affixed to the locomotive, under a penalty of 2*l.*

The different provisions as to the safety of the public then being (as we have already pointed out) repealed, the following are substituted:—Three persons must be employed now to conduct the locomotive, and if there be more than two waggons, an additional man is to be provided to take care of the waggons; one man is to go sixty yards a head on foot with a red flag constantly displayed, to warn all riders and drivers of horses, signal the engine driver to stop when necessary, and assist horses and carriages passing the locomotive; the drivers are to give as much space as possible for other traffic to pass; the whistle must never be sounded, the cylinder taps never opened in sight of any person riding, &c., or in charge of a horse; and in order that no steam may flow off, the steam must never attain a pressure exceeding the limit fixed by the safety valve; the locomotive must be stopped, on the man who precedes, or any person with a horse, or carriage drawn by one, putting up his hand as a signal to do so; the person in charge must have two efficient lights fixed conspicuously on each side of the front of the locomotive, between the hour after sunset and the hour before sunrise; and in the event of non-compliance, the owner is liable to a penalty of 10*l.*, which, however, he may recover summarily from the person in charge, if shewn to have been guilty of negligence or wilful default. The locomotive must never be driven more than four miles an hour; and in passing through a city, town, or village, its speed must be reduced to two miles an hour, and the person infringing this is to be liable to a penalty of 10*l.* But the Lord Mayor of London, the Board of Works in the metropolitan district, the council in any English borough of more than 5000 inhabitants (or where there is no council, but there are trustees or improvement commissioners under act of Parliament, then such persons), and the council, police commissioners, or trustees under act of Parliament, as the case may be, in Scottish boroughs of more than 10,000 inhabitants, may order a less rate than two

miles an hour, and specify the times during which the locomotives may pass through their jurisdiction; the above penalty of 10*l*. to be equally applicable to an infringement of these orders, which are to be written, sealed, and signed as directed by the act, and advertised in the local paper, and of which a copy is to be put up in some public place. And as to Ireland, there is a special provision for the license of the county surveyor, with the approval of the justices, and the recovery of damage done to bridges.

Lastly, it is provided, that no clause in any act prohibiting under penalty the erection or use of steam-engines and machinery within twenty-five yards of a road, unless in a house, or behind a screen sufficient to conceal it from the road, shall prevent ploughing by steam within that distance, if a person be placed in the road to signal the driver to stop when necessary, and to assist horses and carriages passing, and if the driver stop in proper time. The Thames Embankment Act, 1862, is not to be affected; the act is not to authorise any person to use a locomotive which is a public nuisance at common law, either from its construction or its use, or to prevent any person recovering damages for injuries received in consequence of the use of the locomotive; and the two acts are to apply to the United Kingdom.

Such are the provisions as they now stand, and it only remains to us, in conclusion, to point out three very patent difficulties which present themselves on the face of the statutes. First, although there is a penalty for the infringement of the regulations as to the wheels of the locomotives, there appears, by some omission, to be none as to the neglect of those as to the wheels of the waggons. Secondly, there will be some trouble in construing together the clauses in the two acts, as to the penalties for the want of a notice on the locomotives; the first of them giving a 5*l*. penalty for not affixing the name and weight, and a 10*l*. penalty for affixing a wrong name and weight; whilst the second of them, without referring to the former, gives a 2*l*. penalty for not affixing the name and residence. Thirdly, the effect of the clauses, as to the construction of the common-law liability for nuisance in cases where the provisions are complied with, but damage ensues, is not very obvious, and is not made more clear by the clauses in the two acts being very differently worded. Many other difficulties, no doubt, will also arise in construing these acts, and present themselves on a more critical perusal; the above, however, lie on the surface, and cannot escape notice, and are of such a nature as to make us pretty sure that it will turn out, that these statutes, short as they are, afford no exception from the curious clumsiness which seems so fatally to attend our legislative enactments.

### Correspondence.

TO THE EDITOR OF "THE JURIST."

5, Crown Office-row, Temple,  
Oct. 26, 1865.

Sir,—It having been stated that *all* the existing authorised Reporters have joined the new scheme of law reporting, I beg to say that it is not the fact and

that *Hurlstone and Colman's Reports* in the Court of Exchequer will be published as heretofore.

I can also confidently state that *Best and Smith's Reports* in the Court of Queen's Bench will also be published as heretofore.

For my part, I have no confidence in the management of the council, or the success of the scheme, for one of their earliest steps has been to depart from the scheme as recommended by the committee in one of its most important particulars, namely, that contained in Rule 21, and which the committee have declared "*essential for carrying out the scheme.*"

As the matter must be made the subject of investigation, I make no comment upon it.

I remain your obedient servant,  
G. T. HURLSTONE.

### THE LATE ELECTION OF READER ON CONSTITUTIONAL LAW.

WE have received from Mr. Homersham Cox the following correspondence for publication:—

(1).

49, Chancery-lane, July 10, 1865.

My dear Sir,—Mr. Davey, the clerk of the Council of Legal Education, has returned to me the majority of the testimonials which I addressed to the council, but not those which I sent to you from Lord Curriehill, Professor Adams, Mr. Todhunter, and Mr. Parkinson.

Mr. Davey states that he is not aware that these testimonials were submitted to the council, and that he cannot give me any information about them. I should feel obliged if you would inform me how I can recover them.

Yours faithfully,  
John Bailly, Esq. HOMERSHAM COX.

(2).

2, Stone-buildings, July 11, 1865.

My dear Sir,—I send you the testimonials mentioned in your note, and beg to apologise for their not being returned before.

I gave a general direction to my clerk to return all, but one bundle containing those now sent was overlooked.

Yours faithfully,  
JOHN BAILLY.

(3).

July 11, 1865.

My dear Sir,—I have to thank you for returning the remainder of my testimonials, but as you state that they were "overlooked," you leave me in doubt whether they were submitted to the council. You would relieve me from considerable anxiety if you would inform me whether this was the case. As you received these testimonials in due time, I assumed that you undertook to bring them under the consideration of the council.

Yours faithfully,  
John Bailly, Esq. HOMERSHAM COX.

(4).

2, Stone-buildings, July 12.

My dear Sir,—I think that all the testimonials I received were on the table of the council. When the election was over I had all brought back to my chambers. They were in different bundles, and in redistributing them my clerk overlooked one of the bundles.

Yours faithfully,  
JOHN BAILLY.

(5).

July 12, 1865.

Dear Sir,—In answer to my inquiry whether the  
P P 2

testimonials which I sent to you were submitted to the council, you state that you "think" they were laid on the table.

From this reply it seems doubtful whether the testimonials were, even in a merely formal manner, laid before the council; and beyond doubt that the attention of that body was not really drawn to them, and that the decision was made in ignorance of them.

I think I was entitled to expect that you would direct attention to these documents, as they were intrusted to you with your express assent, were of the highest possible character, and were given by very distinguished persons.

It was obviously an essential condition of a fair election that all duly presented testimonials should have been considered by the council, and it now appears that this condition was not observed.

Yours faithfully,

HOMERSHAM COX.

(8).

Lincoln's-inn, July 13, 1865.

Dear Sir,—Your book was worth fifty testimonials. I cannot undertake to say that every testimonial was read by each of the council, but I am certain there never was a fairer election.

Yours faithfully,

JOHN BAILY.

(7).

To the Right Hon. Lord Westbury.

49, Chancery-lane, July 15, 1865.

My Lord,—Shortly after the Readership of Constitutional Law became vacant, I offered myself as a candidate for that office, and submitted to the Council of Legal Education testimonials from your Lordship, the Chancellor of the Exchequer, Vice-Chancellor Wood, Professor Goldwin Smith, the Lord Justice Knight Bruce, Mr. Giffard, Q. C., and the Master of Trinity College, Cambridge.

Subsequently I received from Mr. Baily a message, to the effect that it was desirable that I should give further information respecting my career at Cambridge, and my experience in tuition. I therefore sent to him additional testimonials from persons of great eminence at Cambridge, namely, the Rev. S. Parkinson, prelector and tutor of St. John's College, Professor Adams, the Lowndean Professor of Astronomy, and Mr. Todhunter, the principal mathematical lecturer of St. John's College; and with these I sent a testimonial from Lord Curriehill.

A letter which I received from Mr. Baily, after the election, led me to fear that he had not submitted to the council, for its consideration, the testimonials which I intrusted to him. I have, in two letters, distinctly asked him whether he really did this. The correspondence, a copy of which I now submit to your Lordship as chairman of the Council of Legal Education, puts it beyond doubt, that my later testimonials were not brought under the consideration of that body.

Mr. Baily observes, in his last letter to me, that my "book was worth fifty testimonials." He thus implies that testimonials were superfluous. But this was not the view which he adopted when he requested me to furnish information respecting my experience in tuition. The principal ground of the complaint which I now address to your Lordship is, that the information which was omitted to be given to the council related to the very point on which information was most needed.

In other respects, the grounds of my candidature were, I think, sufficiently clear. I had written the most elaborate Treatise on Constitutional Law which has been published in modern times. That work was

the result of many years of intense application, has been extensively reviewed and commended with a rare unanimity by the press, has been translated into two continental languages, and has been approved by the eminent persons whose testimonials are mentioned at the commencement of this letter. On the other hand, the successful candidate has not published a line on the subject on which he is now appointed to instruct others.

I inclose the testimonials in question, to enable your Lordship to judge whether I have exaggerated their commendatory character.

I have the honour to be,

Your Lordship's faithful servant,  
HOMERSHAM COX.

(8).

1, Upper Hyde Park Gardens, W., Oct. 13.

Dear Mr. Cox,—Your letter of July last was sent to me in Italy. If I remember it rightly, it expressed your regret at not being elected Reader on Jurisprudence, and inquired whether your testimonials had all been seen by the council.

Certainly, the council were well aware of all your testimonials, and of my impression in your favour.

I share in your regret, that you were not appointed.

I do not remember any papers of consequence accompanying your letter, which I think must be at my house in Tuscany. I shall return to Italy in a week, and will have a search made for your letter, and the papers to which you refer.

I think you are capable of far better things in your profession than this Readership would have been, and I heartily wish you all success in it.

Believe me, your faithful servant,

WESTBURY.

Homersham Cox, Esq.

(9).

49, Chancery-lane, Oct. 17, 1865.

My Lord,—I have to return my sincere thanks for your Lordship's gratifying letter, conveying the assurance that you supported my application for the office of Reader of Constitutional Law, and felt regret that I was not appointed.

I obtained two sets of testimonials for presentation to the Council of Legal Education. The first set were deposited with the clerk of the council. The second set were intrusted to Mr. Baily, at his own request, conveyed in a message to me. If your Lordship had before you the correspondence, of which I sent you a copy, it would be obvious that Mr. Baily never informed the council of the existence of this second set of testimonials. They were given by persons of the highest authority in the University of Cambridge, and are the original documents which I sent to your Lordship in July.

My candidature was supported by my published works, by a collection of testimonials such as have been rarely presented by a candidate for any public office, and by your Lordship's voice in the council. Mr. Baily's adverse representations prevailed against these influences. As he was active in his opposition to me, it was the more incumbent upon him to apprise the council of the testimonials which I had intrusted to him.

I know that a grievous wrong has been done me, and I am fully determined not to submit to it in silence. The fact of my unsuccessful candidature has been made the subject of public comment, and, if left unexplained, is calculated to do me great injury. I shall, therefore, in self-defence, publish the correspondence of which this letter forms a part, after giving Mr. Baily an opportunity of reply. I shall, of course, treat as confidential your Lordship's letter to

me, if you require it; but I trust that I shall not be prohibited from making use of that letter, as it is a reply to one which I addressed to your Lordship, as chairman of the Council of Legal Education, on a matter of public import.

If it do not occasion inconvenience, I should be glad to have the original testimonials, inclosed in my letter of July, returned, as I have not kept any copy of them.

I have the honour to be,  
Your Lordship's faithful servant,  
HOMERSHAM COX.

(10).

Oct. 17, 1865.

Sir,—It is my intention to publish the correspondence between you and me respecting the late appointment of a Reader of Constitutional Law, and also certain letters which have passed between Lord Westbury and myself on the same subject.

In order to avoid all imputation of unfairness, I now offer to send you, before I take the intended step, a copy of the last-mentioned letters, in order that you may make any observations on them which you think proper.

I am, your obedient servant,  
HOMERSHAM COX.

John Bailly, Esq.

(11).

54, Westbourne-terrace, Oct. 17, 1865.

Dear Sir,—Pray publish whatever you please, without further communication with me.

Yours faithfully,  
JOHN BAILLY.

Homersham Cox, Esq.

(12).

49, Chancery-lane, Oct. 21, 1865.

Sir,—Notwithstanding your last letter to me, I think that I ought to communicate to you the correspondence between Lord Westbury and myself, before it is published. I therefore inclose a copy, and shall defer the publication for a few days.

I am, Sir,  
Your obedient servant,  
HOMERSHAM COX.

John Bailly, Esq.

(13).

54, Westbourne-terrace, Oct. 21.

Dear Sir,—Excuse my returning the accompanying unopened, as I beg to decline interfering in any way.

I am, dear Sir,  
Yours faithfully,  
JOHN BAILLY.

[We have already expressed an opinion, that in the recent appointment the council appear to have acted as if they were dispensing patronage, rather than discharging a public duty. The above correspondence concerns one member of the council alone. It appears, that after Mr. Cox had submitted his general testimonials to the council, he, at Mr. Bailly's suggestion, procured further testimonials of his experience and success in academic tuition, and intrusted them to that gentleman for the use of the council. The council were discharging an important public duty, and each member was bound to make himself acquainted with every testimonial of every candidate whose pretensions were plausible. Mr. Bailly—intrusted with testimonials procured at his suggestion, and therefore important in his estimation—could not be ignorant that it was his duty, if not to have them read before the meeting, at least to draw the council's attention to them, as a material supplement to

the documents already in their hands. This duty he has been distinctly charged with neglecting, and we do not find that he denies the charge. On the contrary, he appears to have kept them to the end under his own control; so that at last they are returned by his clerk, and not by Mr. Davey, the clerk of the council. Lord Westbury's statement, that the council were well aware of all the testimonials, is of no weight, because a subsequent passage in his letter shews that his Lordship had no recollection of the existence of those in question.]

## Court Papers.

### EQUITY SITTINGS, MICHAELMAS TERM, 1865.

Before the LORD CHANCELLOR.

At Westminster.

Thursday .. Nov. 2 Appeal Motions and Appeals.

At Lincoln's Inn.

Friday .....	3	Petitions and Appeals.
Saturday .....	4	Appeals in Bankruptcy and Appeals.
Monday .....	6	} Appeals.
Tuesday .....	7	
Wednesday .....	8	Appeals in Bankruptcy and Appeals.
Thursday .....	9	Appeal Motions and Appeals.
Friday .....	10	Appeals.
Saturday .....	11	Appeals in Bankruptcy and Appeals.
Monday .....	13	} Appeals.
Tuesday .....	14	
Wednesday .....	15	Appeals in Bankruptcy and Appeals.
Thursday .....	16	Appeal Motions and Appeals.
Friday .....	17	Appeals.
Saturday .....	18	Appeals in Bankruptcy and Appeals.
Monday .....	20	} Appeals.
Tuesday .....	21	
Wednesday .....	22	Appeals in Bankruptcy and Appeals.
Thursday .....	23	Appeals.
Friday .....	24	Petitions and Appeals.
Saturday .....	25	Appeal Motions and Appeals.

Before the LORDS JUSTICES.

At Westminster.

Thursday .. Nov. 2 Appeal Motions.

At Lincoln's Inn.

Friday .....	3	} Appeal Motions, Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	4	
Monday .....	6	} Appeals.
Tuesday .....	7	
Wednesday .....	8	
Thursday .....	9	Appeal Motions and Appeals.
Friday .....	10	} Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	11	
Monday .....	13	Appeals.
Tuesday .....	14	} Appeals from the County Palatine of Lancaster and Appeals.
Wednesday .....	15	
Thursday .....	16	Appeal Motions and Appeals.
Friday .....	17	} Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	18	
Monday .....	20	
Tuesday .....	21	} Appeals.
Wednesday .....	22	
Thursday .....	23	
Friday .....	24	} Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	25	

Notices.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.**At Westminster.*

Thursday .. Nov. 2 Motions.

*At Chancery-lane.*

Friday ..... 3 General Paper.  
 Saturday ..... 4 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 6 }  
 Tuesday..... 7 } General Paper.  
 Wednesday .... 8 }  
 Thursday ..... 9 Motions and General Paper.  
 Friday ..... 10 General Paper.  
 Saturday ..... 11 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 13 }  
 Tuesday ..... 14 } General Paper.  
 Wednesday .... 15 }  
 Thursday ..... 16 Motions and General Paper.  
 Friday ..... 17 General Paper.  
 Saturday ..... 18 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 20 }  
 Tuesday..... 21 } General Paper.  
 Wednesday .... 22 }  
 Thursday ..... 23 }  
 Friday ..... 24 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Saturday ..... 25 { Motions, Adjourned Summonses, and  
   General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.**At Westminster.*

Thursday .. Nov. 2 Motions.

*At Lincoln's Inn.*

Friday ..... 3 { Petitions, Adjourned Summonses, and  
   General Paper.  
 Saturday ..... 4 { Short Causes, Adjourned Summonses,  
   and General Paper.  
 Monday..... 6 }  
 Tuesday ..... 7 } General Paper.  
 Wednesday .... 8 }  
 Thursday ..... 9 { Motions, Adjourned Summonses, and  
   General Paper.  
 Friday ..... 10 { Petitions, Adjourned Summonses, and  
   General Paper.  
 Saturday ..... 11 { Short Causes, Adjourned Summonses,  
   and General Paper.  
 Monday..... 13 }  
 Tuesday..... 14 } General Paper.  
 Wednesday .... 15 }  
 Thursday ..... 16 { Motions, Adjourned Summonses, and  
   General Paper.  
 Friday ..... 17 { Petitions, Adjourned Summonses, and  
   General Paper.  
 Saturday ..... 18 { Short Causes, Adjourned Summonses,  
   and General Paper.  
 Monday..... 20 }  
 Tuesday..... 21 } General Paper.  
 Wednesday .... 22 }  
 Thursday ..... 23 }  
 Friday ..... 24 { Short Causes, Petitions, Adjourned  
   Summonses, and General Paper.  
 Saturday ..... 25 { Motions, Adjourned Summonses, and  
   General Paper.

N. B.—Any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART.**At Westminster.*

Thursday .. Nov. 2 Motions.

*At Lincoln's Inn.*

Friday ..... 3 Petitions and Causes.  
 Saturday ..... 4 Short Causes and Causes.  
 Monday..... 6 }  
 Tuesday..... 7 } Causes.  
 Wednesday .... 8 }  
 Thursday ..... 9 Motions and Causes.  
 Friday ..... 10 Petitions and Causes.  
 Saturday ..... 11 Short Causes and Causes.  
 Monday..... 13 }  
 Tuesday..... 14 } Causes.  
 Wednesday .... 15 }  
 Thursday ..... 16 Motions and Causes.  
 Friday ..... 17 Petitions and Causes.  
 Saturday ..... 18 Short Causes and Causes.  
 Monday..... 20 }  
 Tuesday..... 21 } Causes.  
 Wednesday .... 22 }  
 Thursday ..... 23 }  
 Friday ..... 24 Petitions and Causes.  
 Saturday ..... 25 Motions, Short Causes, and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.**At Westminster.*

Thursday .. Nov. 2 Motions.

*At Lincoln's Inn.*

Friday ..... 3 General Paper.  
 Saturday ..... 4 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 6 }  
 Tuesday ..... 7 } General Paper.  
 Wednesday .... 8 }  
 Thursday ..... 9 Motions and General Paper.  
 Friday ..... 10 General Paper.  
 Saturday ..... 11 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 13 }  
 Tuesday..... 14 } General Paper.  
 Wednesday .... 15 }  
 Thursday ..... 16 Motions and General Paper.  
 Friday ..... 17 General Paper.  
 Saturday ..... 18 { Petitions, Short Causes, Adjourned  
   Summonses, and General Paper.  
 Monday..... 20 }  
 Tuesday..... 21 } General Paper.  
 Wednesday .... 22 }  
 Thursday ..... 23 }  
 Friday ..... 24 }  
 Saturday ..... 25 Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

## COMMON-LAW CAUSE LISTS, MICHAELMAS TERM 1865.

*Court of Queen's Bench.*

## NEW TRIALS.

## FOR ARGUMENT.

*Moved Easter Term, 1864.*

Ches.—Hughes v. Birkenhead  
 Improvement Commissioners  
 (First action, to be argued with D. To stand over)

Ches.—Same v. Same (Second action, Ditto)

— Davies v. Same (Ditto)

*Moved Mich. Term, 1864.*

Durham—Ecclesiastical Commissioners for England v. Peart

**Easter Term, 1865.**

Bedford—Asher v. Whitelock  
 Lancaster—Martin v. Smalley  
 (Stands for arrangement)  
 Herts.—Crowland v. Allom  
 Leeds—Mayne v. Burns  
 Stafford—Dumnock v. North  
 Staffordshire Railway Co.  
 Hereford—Mainwaring v.  
 Cheese

*Tried during Term.*  
 Midd.—Edwards v. Parker  
 —Dordoy v. Johnson  
*Moved Trin. Term, 1865.*  
 Derby—Cartwright & ora. v.  
 Forman  
 Midd.—Watts & ora. v. Lewis  
 —Sullivan v. Hayward  
*Tried during Term.*  
 Midd.—Double v. Sharp  
 —Haslitt v. Templeman.

**SPECIAL PAPER.**

Those marked thus \* are Special Cases, and thus † Demurrers.

**FOR JUDGMENT.**

\*Worthington v. Hulton

**FOR ARGUMENT.**

†Hughes v. Birkenhead Improvement Commissioners  
 (New Trial to be argued with this D., stands over)  
 †Same v. Same (Ditto)  
 †Davies v. Same (Ditto)  
 \*Bryant v. Foot  
 \*Cory & ora. v. Thames Iron Works and Ship Building Co. (Limited)  
 †Jolwald v. Continental Bank Corporation (Limited) (To stand over till issues in fact tried, &c.)  
 Brabant v. Sir T. M. Wilson, in re the Copyhold Acts, &c. (Ap. from Copyhold Commissioners)  
 †Le Strange v. Rowe (Part heard, stands till issues in fact tried)  
 †Tydeman v. Carne (Stands over)  
 †Peakman v. Marsh  
 †Simpson v. Haller  
 †Fothergill v. London, Chatham, and Dover Railway Co.  
 †Russell v. Trickett  
 †Same v. Same  
 †Hetherington v. Hicks (St. over till issues in fact are tried)

†Haselgrove v. House  
 †Churchward v. Reg. (Petition of right)  
 †Bewley v. Rugg  
 †Runelot v. Mills  
 †Holroyd v. Colston & ora.  
 †Hart & ora. v. Stevens  
 †Bond & ora. v. Westow  
 \*Le Leveteur v. London and South-western Railway Co.  
 †Ecclesiastical Commissioners for England v. Peart  
 Hall v. Master, Wardens, &c. of the Merchant Adventurers, &c. (Appeal from County Court)  
 †Keyes & ora. v. Edwards  
 †European Central Railway Co. (Limited) v. Westall  
 †English and Irish Bank (Limited) v. Watson  
 †Wood & ora. v. Dunn  
 †Donaldson v. Pulley  
 \*Brand & Wife v. Hammer and City Railway Co.  
 \*Piper v. Reg. (Pet. of right)  
 \*Booth v. Parker  
 †Cheshneman v. London, Chatham, and Dover Railway Co.  
 \*Foster v. Dodd  
 \*†Taylor v. Shafte  
 †Donald v. Suckling  
 \*Greenwood v. Scragg  
 †Wensum Valley Railway Co. v. Great Eastern Railway Co.

**ENLARGED RULES.****First Day.**

In re Freeman  
 In re Ambler  
 Hemming v. Parker  
 Hawkins & an. v. Carr  
 Parsons & an. v. Carr  
 Reg. v. Travers Twiss, Judge of Consistory Court  
 Reg. v. Toomer  
 Reg. v. London, Chatham, and Dover Railway Co.

Reg. v. Ell  
 Reg. v. Middle Level Commissioners  
 Reg. v. Assessment Committee of Durham Poor Law Union  
 Reg. v. Hampton & ora.  
 Reg. v. Members of Hearts of Oak Benefit Society  
 Reg. v. Magistrates of Bow-street Police Court.

**CROWN PAPER.**

Tewkesbury .... Reg. v. Severn Navigation Commissioners.  
 Surrey..... Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).  
 Cornwall..... Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe. (To stand over till judgment given in the House of Lords).  
 Devonshire ..... Mayor, &c. of South Molton v. Churchwardens of South Molton.

Yorkshire ..... Trustees, Committee, and Officers of Ilkley Hospital v. Churchwardens and Overseers of the Township of Ilkley.  
 Buckinghamshire Reg. v. Trustees of the British Orphan Asylum.  
 Nottinghamshire — Worksop Local Board of Health (Part heard).  
 Middlesex ..... Governor of the House of Correction, Coldbath-fields.  
 Surrey..... Conservators of the River Thames v. Guardians of the Parish of St. Mary, Lambeth. (To stand over till judgment given in the House of Lords in the Mersey Docks case).  
 Cheshire ..... Reg. v. Heath & ora.  
 Kent ..... Chatham Board of Health v. Rochester Road and Improvement Commissioners.  
 Middlesex..... Reg. v. Inhabitants of St. Leonard's, Shoreditch.  
 Staffordshire.... — Dodd and Southan.  
 Middlesex..... Guardians of Hastings Union v. Guardians of St. James's, Clerkenwell.  
 Lancashire ..... Dearden v. Townsend.  
 Yorkshire..... Wakefield Local Board of Health v. Grimsby Railway Co.  
 — .. Reg. v. Ratepayers of Northouram and Clayton.  
 Sussex ..... Saunders v. Balby.  
 Staffordshire.... Reg. v. Inhabitants of Bilston.  
 Norfolk ..... — Spurrell.  
 Lancashire..... — Inhabitants of Bolton.  
 Cardiff ..... Cousens v. Stockdale.  
 Middlesex..... Reg. v. Board of Works of Fulham District.  
 Dorsetshire .... — Farrer.  
 Lincolnshire .... Smith v. Smith.  
 Liverpool ..... Bates v. Finlay.  
 Cumberland .... Reg. v. Metcalfe.  
 Lincolnshire .... — Clark.  
 Cornwall ..... Giles v. Glubb.  
 Yorkshire ..... Wakefield Borough Market Company v. Crawshaw.  
 Kent ..... Reg. v. The Inhabitants of Lee.  
 Birmingham.... The Midland Railway Company v. The Borough Council of Birmingham.  
 Middlesex ..... Pemberton v. The Trustees of St. Mary's, Whitechapel.  
 Grantham..... Reg. v. Strugnall.  
 Devonport..... Ash v. Lynn.  
 Lancashire .... Emmott v. Clayton.  
 Nottingham .... Shelbourne v. Oliver.

**Court of Common Pleas.****NEW TRIALS.****FOR ARGUMENT.**

*Moved Mich. Term, 1863.*  
 Midd.—Packer & an. v. The Great Western Railway Co. (To stand over till Beal v. South Devon Railway Co. in the House of Lords is disposed of)  
 Glamorgan—Jegon v. Vivian

**Moved Trinity Term, 1865.**

Midd.—Williams v. Golding  
 — Edgell v. Day  
*Postponed Motions.*  
 Lond.—Spalding v. Catholic Bookselling & Publishing Co. (Limited)  
 Mallett v. Bateman.

**DEMURRER PAPER.****SPECIAL ARGUMENTS.****Tuesday, May 30.**

Mayor of York v. Churchwardens of All Saints, York (Ap., to stand over till case in House of Lords is disposed of)  
 Mainwaring v. Langham Hotel Co. (Limited) (D.)  
 Johnson & an. v. Royal Mail Steam-packet Co. (Case at Nisi Prius)

**Thursday, June 1.**

Arbuthnot v. Streckenisen (Case by order)  
 Church v. Tame (Case by or.)

**Tuesday, June 6.**

Goodyear v. Mayor of Weymouth (Sp. C.)

**Wednesday, Nov. 8.**

Gyde v. Lingwood  
 Lingwood v. Gyde (Case under Copyhold Act remitted for amendment)

Arbutnot v. Strachan  
(Case by order)  
Cutler v. Larchin (Case for  
arbitration)  
Kidston v. The Empire Ma-  
rine Assurance Co. (D.)  
Winter v. Dumerge (Case at  
Nisi Prius)

Bankin v. Potts (Sp. C.)  
Wigan v. Strange (Appeal  
from magistrate)  
Gedwin v. Southbottom  
(County Court appeal)  
*Friday, Nov. 10.*  
Beckett v. Midland Railway  
Co. (D.)

#### REMANET PAPER.

*First Day.*  
In re Tom Taylor and W. B.  
Emden, ex parte Taylor (Case pending on the same  
point in the Court of Chan-  
cery).

#### CUR. ADV. VULT.

Hanschfeld v. Smith | Johnson v. Chapman  
Guppy v. Frith.

#### Court of Exchequer.

##### SITTINGS—MICHAELMAS TERM.

<i>Days in Term.</i>	<i>Banc.</i>
Thursday .. Nov. 2	Motions.
Friday .....	Errors and Motions.
Saturday .....	.....
Monday .....	.....
Tuesday .....	.....
Wednesday .....	Special Paper.
Thursday .....	Lord Mayor sworn.
Friday .....	.....
Saturday .....	Criminal Appeals.
Monday .....	Special Paper (Sheriff nominated).
Tuesday .....	.....
Wednesday .....	Special Paper.
Thursday .....	.....
Friday .....	.....
Saturday .....	.....
Monday .....	Special Paper.
Tuesday .....	.....
Wednesday .....	.....
Thursday .....	.....
Friday .....	.....
Saturday .....	.....

##### *Days in Term.*

##### *Nisi Prius.*

Friday .....	Nov. 3	Middlesex, first Sitting.
Friday .....	10	Middlesex, second Sitting.
Friday .....	17	Middlesex, third Sitting.

#### NEW TRIALS.

##### FOR JUDGMENT.

*Moved Hilary Term, 1866.*

Liverp.—Brabner v. Macnam  
(To stand over till special  
case settled)

*Moved Easter Term, 1865.*  
Manches.—Collier v. Moss  
(heard June 5, 1865)  
*Moved after 4th day of*  
*Trinity Term, 1865.*  
Midd.—Bouillon v. Valentin.

#### SPECIAL PAPER.

##### FOR JUDGMENT.

Richards v. Harper (D.,  
heard on the 16th Jan.  
1865, ordered to be re-  
argued)  
Drake v. Pywell (D.)  
Collier v. Mass (D.)

##### FOR ARGUMENT.

Cooke v. Mostyn (D., Nov. 14,  
part heard, ordered to stand  
over till issues in fact tried)

Goodyear v. Lindsay (D., 1st  
May, 1865, part heard)  
Campbell v. Dufaur (D., part  
heard Jan. 18, 1865, to stand  
over till issues in fact tried)  
Albopp v. Guest (D., to stand  
over till issues in fact tried)  
Clark v. Magnus (D., to stand  
over till issues in fact tried)  
Lord Colchester v. Kewney  
(Sp. C.)

#### ERRORS AND APPEALS.

##### FOR JUDGMENT.

Woods v. De Mathos (Er.,  
heard June 21 and 22)

##### FOR ARGUMENT.

Morgan v. Gath (Ap.)  
Whittaker v. Lowe (Ap.)

#### THE CREDIT FONCIER AND MOBILIER OF ENGLAND (LIMITED).

It would appear that when Fabrice expatriated to Gil Blas on the manner in which his master, Mannel Ordoñez, in mixing himself up in the affairs of the poor, had contrived to become rich, and announced his intention of following that worthy's example, he was enunciating a piece of practical philosophy which has been left to the limited partnerships and sociétés anonymes of to-day, to "develope" to its "legitimate extent." Every one has heard of that astonishing body on the other side of the water which lent, assisted, negotiated, advanced, and loaned like a corporate Rothschild, to many of the Governments, companies, and speculators of the Continent. Limited liability has since given rise to a Credit Foncier and Mobilier of England, which appears no less active than its continental predecessor in lending, assisting, negotiating, and loaning to all and sundry, apparently with as good a reason for being satisfied with the result of its labours as ever had Master Ordoñez. The Credit Foncier and Mobilier of England (Limited) are now increasing their capital by issuing new shares, and according to the prospectus and report which has been issued with reference to this measure, it would appear that, up to the 30th September last, a dividend at the rate of 40 per cent. per annum has been declared, being the same dividend and bonus as was paid for the previous half-year.

"Besides these unprecedented results" (the quotation is from the prospectus), "the company is in the possession, up to the 30th September, of a general reserve fund of 200,000*l.*, of a dividend reserve fund of 100,000*l.*, and has profits in hand up to the same period, after paying the above-mentioned dividend and bonus, of 50,805*l.* 4*s.* 9*d.*, the paid-up capital being 500,000*l.*; making in all 850,805*l.* 4*s.* 9*d.*, or above 8*l.* 10*s.* per share." With such magnificent results, it would certainly appear that the process of helping the needy is no less profitable now than it was in the days of Le Sage, and that, like the quality of mercy, it blesses both him that gives and him that takes—probably the former in the larger measure of the two.

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### THE CREDIT FONCIER and MOBILIER of ENGLAND (LIMITED).

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The issue will be made as follows.—  
 50,000 shares will be allotted to the present Shareholders, and 50,000 shares will be allotted to the General Public.  
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#### PROSPECTUS.

The marked success which has attended the operations of the Credit Foncier and Mobilier of England (Limited) is almost unexampled in the history of any commercial undertaking.

The results of its operations have been so satisfactory that, as will be seen by the half-yearly report just issued, a dividend and bonus, up to the 30th September, at the rate of 40 per cent. per annum, has been declared, being the same dividend and bonus as was paid for the previous half-year.

Besides these unprecedented results, the Company is in the possession, up to the 30th September, of a general reserve fund of 200,000l., of a dividend reserve fund of 100,000l., and has profits in hand up to the same period, after paying the above-mentioned dividend and bonus, of 50,805l. 4s. 9d., the paid-up capital being 500,000l.: making in all 850,805l. 4s. 9d., or above 8l. 10s. per share.

The following is the business transacted by this Company:—  
 This Company negotiates Loans for Colonial and Foreign Governments.

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Makes advances to Corporations, Town Councils, and other public bodies.

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Assists in the introduction of Industrial and Commercial Undertakings.

Makes advances upon approved Stocks, Shares, Bonds, &c.

Makes temporary Loans upon eligible Freehold and Leasehold Securities, and generally transacts such other financial business as is suitable to the capitalist, whether as principal or agent.

The greatly increased and still increasing amount of business offered to this Company, both by eminent private firms, companies, and corporations, has decided the Court of Directors to make their second issue of shares, by allotting the remaining capital of the Company, consisting of 100,000 new shares, on which 5s. per share only is intended to be called up.

These 100,000 new shares the Directors propose to issue as follows, viz. 50,000 shares will be issued to the shareholders in this Company who stand registered on the books of the Company, to be allotted to them at a premium of 2l. 10s. per share, in the proportion of one new share for every two shares now held; and

50,000 shares will be issued to the general public (including such shareholders as may wish to apply for shares in addition to those they are entitled to as shareholders), to be allotted at a premium of 3l. 10s. per share.

The premiums to be received upon this issue will amount to 300,000l., which will be added to the 200,000l. already standing at the credit of the general reserve fund, and will thus increase that fund to 500,000l. The dividend reserve fund being 100,000l., the paid-up capital will then be 1,000,000l.

The new Shares will be paid up as follow: viz.—

On those issued at 2l. 10s. per share premium to the shareholders:—  
 £1 0 0 per share on application; being on capital account.  
 1 10 0 per share on allotment; 1l. being on capital account, 10s. on premium account.  
 2 10 0 per share on 1st January, 1886; 1l. 10s. being on capital account, 1l. on premium account.  
 2 10 0 per share on 1st March, 1886; 1l. 10s. being on capital account, 1l. on premium account.  
 £7 10 0 being 5l. capital, 2l. 10s. premium.

On those shares issued at 3l. 10s. per share premium to the general public, the following will be the mode of payment:—

£1 0 0 per share on application; being on capital account.  
 2 10 0 per share on allotment; 1l. being on capital account, 1l. 10s. on premium account.  
 2 10 0 per share on 1st January, 1886; 1l. 10s. being on capital account, 1l. on premium account.  
 2 10 0 per share on 1st March, 1886; 1l. 10s. being on capital account, 1l. on premium account.  
 £8 10 0 being 5l. capital, 3l. 10s. premium.

These 100,000 new shares will participate in the next distribution of profits, pro rata with the existing shares, according to the amount of capital paid up thereon; the valuable option will be, however, reserved to the holders of these shares of paying upon any of them the whole of the above instalments at any time previous to the date of the last instalment, viz. 1st March, 1886, on paying the Company back interest from the date of such payment to 30th September last, at the rate of 20 per cent. per annum on the 5s. on capital account; the shares so paid up to be then entitled to the same amount of profits next half-year as is declared on the existing shares.

Interest at the rate of 20 per cent. per annum will be charged on all instalments not punctually paid; and any instalment not duly paid will render the previous payments liable to forfeiture.

The Directors are aware that in thus admitting the public to subscribe for shares at a price so much below their real value, they are departing from the practice generally adopted in an issue of new shares, of offering the whole of them to the shareholders; but the Directors are so impressed with the importance of increasing the area of influence

of this Company—influence second only in importance to a Company like the Credit Foncier and Mobilier of England—and have had such proofs in the result of the issue of shares a year ago, of the sound policy of admitting the public to a participation in such issue, that they feel confident of obtaining the approval of the shareholders in the course they have adopted.

The following calculation will guide investors in estimating the intrinsic value of the shares, after the dividend and bonus now declared are paid, and when the issue is completed:

The capital paid up will amount to .....	£1,000,000	0	0
The General Reserve Fund .....	500,000	0	0
The Dividend Reserve Fund .....	100,000	0	0
In hand, profits not divided .....	50,805	4	9
	£1,650,805	4	9

Equal to above 81. 5s. per share on the whole 200,000 shares. So that the public, on subscribing at 81. 10s. per share (being 51. capital and 31. 10s. premium), are being admitted partners in this Company by only paying 5s. per share premium, as premium; 81. 5s. per share being actually represented in value in the assets of the Company. Over and above these advantages, there is the probable enhanced value which will attach to these shares, in the same way that the shares issued to the public at 24. 13s. 4d. premium in September, 1864, after having received 11. per share in April last as dividend and bonus, are now worth 51. 5s. per share premium, making together 64. 5s. for what they paid 24. 13s. 4d. for, being in one year more than 1401. per cent. increase in value on the amount paid for premium.

The Directors feel that, with a paid-up capital of 1,000,0001., a general reserve fund of 500,0001., a dividend reserve fund of 100,0001., making a total of 1,600,0001., they will be in a position to meet the exigencies of any business that may be brought before them; it is, however, the intention of the Directors to increase, out of future profits, the dividend reserve fund to 200,0001., being in accordance with the plan announced in the last report, to have always in hand one year's minimum dividend at 201. per cent. per annum, calculated on the amount of the capital paid up for the time being.

The Directors further wish to place on record their deliberate opinion and conviction that this Company is destined in a very short period to take a foremost place among the leading monetary institutions of the country.

Applications for shares may be made in the form annexed, and must be accompanied by the payment of 11. per share. Should a less number be allotted than is applied for, the sum paid for on account of such application will, so far as it will extend, be applied in payment of the sum due on allotment.

Prospectuses, forms of application for shares, and copies of the half-yearly report, just published, may be had on application to the Bankers, Solicitors, Stock Brokers, or of the Secretary at the Offices of the Company, 17 and 18, Cornhill, E. C.

The lists of application for shares will be closed on Thursday, the 2nd November, at 4 o'clock, for London, and on Friday, the 3rd November, at 12 o'clock, for country applications, before the expiration of which time all applications must be made.

London, October 20, 1865.

Form C.—General Public.

FORM OF APPLICATION FOR SHARES.

To be retained by the Banker.

No. ....

To the Directors of the Credit Foncier and Mobilier of England (Limited).

Gentlemen,—Having paid to your bankers\*, the sum of £ ....., being a deposit of 11. per share on New Shares in the Credit Foncier and Mobilier of England (Limited), I hereby request that you will allot me that number, and I agree to accept such shares, or any less number you may allot to me, on the terms of the prospectus, at 31. 10s. premium per share, and I agree to pay the amount due on allotment, and the other instalments as they become due, to sign the Articles of Association, if required; and I authorise you to insert my name on the register of members for the number of shares so allotted to me.

Usual signature .....

Name in full .....

Residence .....

Profession .....

Date .....

\* Insert bankers' names.

## THE CREDIT FONCIER and MOBILIER of ENGLAND (LIMITED).

AT a MEETING of the Shareholders of this Company, held THIS DAY (Tuesday), the 24th October, 1865, at 11 o'clock A. M.,

The Right Honourable JAMES STUART WORTLEY, Governor, in the Chair,

It was proposed, seconded, and carried unanimously:—That the balance-sheet and report be, and are hereby approved, confirmed, and adopted.

It was also proposed, seconded, and carried unanimously:—That the best thanks of this meeting are due, and are hereby given, to the Governor, Deputy-Governors, and Directors, for the great care and attention they have given to the interests of the shareholders, and for the extremely satisfactory results which have arisen therefrom.

It was also proposed, seconded, and carried unanimously:—That the cordial thanks of this meeting are eminently due, and are hereby offered, to Albert Grant, Esq., M. P., the managing director, for the talent displayed by him in the administration of the affairs of the Company.

It was further proposed, seconded, and carried unanimously:—That the thanks of this meeting be given to Alfred Lowe, Esq., Secretary, for his unvarying attention; and to him and the other officers of the Company for their industry and zeal during the past half-year.—By order of the Court of Directors,

J. STUART WORTLEY, Governor.  
ALFRED LOWE, Secretary.

17 and 18, Cornhill, London, Oct. 24, 1865.

## THE CREDIT FONCIER and MOBILIER of ENGLAND (LIMITED).

NOTICE IS HEREBY GIVEN, that the LISTS of APPLICATION for the NEW SHARES in this Company will be CLOSED on THURSDAY, the 2nd November, at 4 o'clock, for London, and on FRIDAY, the 3rd November, at 12 o'clock, for country applications, before the expiration of which time all applications must be made.—By order,

ALFRED LOWE, Secretary.

17 and 18, Cornhill, London, Oct. 24, 1865.

## THE CREDIT FONCIER and MOBILIER of ENGLAND (LIMITED).

The PROSPECTURES and FORMS of APPLICATION for the SHARES of the NEW ISSUE of CAPITAL of this Company are NOW READY, and, as well as copies of the Half-yearly Report and Balance-sheet, can be obtained at the Company's Offices.

ALFRED LOWE, Secretary.

17 and 18, Cornhill, London, Oct. 24, 1865.

City of London, Gracechurch-street. About 11,600 feet of Freehold and long Leasehold Ground, with vacant possession of all but a small portion.

MESSRS. EDWIN FOX and BOUSFIELD are honoured with instructions to announce for SALE by AUCTION, at Garraway's, Change-alley, Cornhill, on Wednesday, Nov. 8, at 12, in one lot, a remarkably important and valuable FREEHOLD and LONG LEASEHOLD ESTATE, in the most central position within the City of London, and unequalled in the facilities it presents for judicious development. It comprises the site of the Spread Eagle Hotel, in Gracechurch-street, and its very large yards and premises in the rear, extending through into Leadenhall-market, and of the premises, Nos. 66 and 87, Gracechurch-street, with vacant possession; also the Freehold House, No. 85, Gracechurch-street, with possession in about six years. The estate occupies the singularly extensive area of about 12,600 feet, having a frontage of about 63 feet, a mean depth of about 152 feet, and is almost uncontrolled by ancient lights; its extreme availability for the prosecution of a well-devised building scheme is thus apparent, and the success thereof is guaranteed by the centrality of the location, standing, as it does, in the very heart of the City, equidistant from all its markets and principal resorts of commerce, and in the main artery from north to south. The tenure is as follows:—About 7000 feet of the land are freehold, and the remainder (about 5600 feet) are held from the Skinners' Company for a term of 80 years, at only 11001. per annum ground rent. No. 85, Gracechurch-street is let on lease for a term, of which six years are unexpired. Vacant possession of the whole of the remainder will be given on completion.

Particulars, with plans, are now ready, and may be had of Messrs. Jamson, Cobb, & Pearson, solicitors, 41, Finsbury-circus; at Garraway's; and of Messrs. Edwin Fox & Bousfield, 24, Gresham-street, Bank, E. C., corner of Coleman-street.

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## THE JURIST.

LONDON, NOVEMBER 4, 1866.

OFTEN as the rule in *Shelley's case* has been discussed, it appears to be still unsettled by direct decision, whether the rule extends to a legal limitation by way of springing use or executory devise—whether, for instance, in the case of a settlement or devise to the use of A., during his life, and after his decease to the use of his children, as tenants in common in fee, and in case he should have no child who should attain the age of twenty-one years, to the use of his right heirs, A. would take an estate in fee under the ultimate limitation, as he clearly would have done if the limitation to the use of the children had been confined to such as should attain the age of twenty-one years.

In the case of *Lloyd v. Carew* (Pra. Ch. 72; Show. P. O. 137), on the marriage of Penelope T. with Richard Carew, she and one of her two sisters and coheirs conveyed their two-third parts of certain descended estates to the use of Richard and Penelope successively for life; remainder to their sons and daughters in tail; with remainder to Richard Carew in fee, subject to this proviso—that if it should happen that no issue of Richard and Penelope should be living at the death of the survivor of them, and the heir of Penelope should, within twelve months after the death of the survivor, pay 4000*l.* to the heirs or assigns of Richard, the remainder in fee limited to Richard should cease, and the premises should remain to the use of the right heirs of Penelope. After the marriage, Susan, the other sister, and her husband, covenanted to complete the partition, by levying a fine of her third in the settled lands to such uses as Carew and his wife should appoint. Carew and his wife then levied a fine of the settled estate; and, by deed, declared that that fine and the fine to be levied by Susan should enure to the use of Carew and his wife successively for life, with remainder to Carew in fee, to the end that all the estate and possibility of Penelope and her heirs, on payment of the 4000*l.*, might be extinct. After the death of Carew and his wife, without issue, the heirs of Mrs. Carew claimed to have the estate on payment of 4000*l.* The bill was dismissed in Chancery, on the ground that the shifting use, not being limited to take effect within a life in being, was too remote; but the dismissal was reversed by the House of Lords, who thus took a step towards the establishing the rule which was finally settled in *Cadell v. Palmer* (7 Bligh, N. S., 202), and at the same time affirmed the doctrine, that a fine cannot affect executory uses. (See *Whitfield v. Faussett*, 1 Ves. sen. 387; *Romilly v. James*, 6 Taunt. 262). The case, therefore, is no authority as to the application of the rule in *Shelley's case*, further than that it seems to have been admitted that the executory use was in Mrs. Carew. Fearn, however, in commenting on the case, observes, that “the new use in this case to the heir of Penelope was not a limitation which could unite with that to the ancestor, according to the rule in *Shelley's case*,

for it was not a remainder to arise upon the determination of the preceding estate, but was a conditional limitation of a future use, whereas that rule applies only to remainders; therefore the land vested in Penelope's heir by purchase and not by descent.” (C. R., p. 276). So Mr. Watkins, in the Essay on Descents, says, that the rule “applies only to those cases in which the estate to the heir is limited by way or remainder, and does not extend to those in which the estate to the heir is a conditional limitation” (p. 166, or 4th ed. 210); citing Fearn, and giving the very inconclusive reason, that “a remainder is to commence when the particular estate is from its very nature to determine it, as it were a continuance of the same estate; it is a part of the same, while a conditional limitation is not to continue of the estate first limited, but is entirely a different use; it is not to commence on the determination of the first, but the first is to determine when the latter commences.” So, Mr. Hayes says, “it is clear that, to an executory devise or springing use, the rule does not apply.” (Hayes's Principles, p. 52).

The point was raised but not decided in *Coape v. Arnold* (2 Sm. & Gif. 311; 4 De G., Mac., & J. 574). There, a testator by his will devised real estates to G. H., his eldest son, for ninety-nine years, if he should so long live, and subject thereto, to trustees and their heirs during the life of G. H., “in trust only to support contingent remainders;” with remainder to the heirs of the body of G. H.; with remainder over. If the will had stood alone, it is clear that G. H. would not have taken an estate tail, because he had only an equitable freehold, and the legal estate was devised to his heirs. But the testator, by a codicil, devised the estates to trustees in fee, upon trusts for payment of debts and a jointure, which did not exhaust the beneficial interest. It was held that they were bound to convey the residue to the uses limited by the will, and that G. H. therefore did not take an estate tail. Sir J. Stuart, V. C., decided the case mainly on the ground that the express limitation of a term of years to the son excluded any resulting trust; but on appeal, the present Lord Chancellor relied rather on the obligation of the trustees to convey to the exact uses limited in the will. (See some remarks by a distinguished conveyancer on this case, 7 Jur., part 2, p. 264). The question before us did not call for decision, but the Lord Chancellor said that his understanding of the rule had always been, “that it applied only to the case of remainders created by the same instrument which creates a particular estate of freehold.”

On the other hand, Mr. Preston says, that the rule requires that the heirs shall be named to take “by way of remainder, or at least so that the estate to arise from the limitation to the heirs and the estate of freehold in the ancestor shall both owe their effect to the same deed, will, or writing” (1 Prest. Estates, 266); and he refers to *Venables v. Norris* (7 T. R. 342, 438), where, although it was argued that the rule could not apply to an executory limitation, the Court was prepared to certify to the contrary, in the event of their holding that the executory limitation was a use

executed by the statute. Burton, a very accurate writer, and well versed in the old learning, refers to the doubt, and decides, that if there is nothing peculiar in the case to make "heirs" a word of purchase, the rule applies to an executory limitation. (Comp., § 346). Indeed, the discussion in the cases, considered by Fearn (C. R. 71), whether the rule could apply to limitations in different instruments otherwise than by way of appointment, could not have arisen if the rule had been understood to apply to remainders only.

The rule, as stated by the defendant's counsel, in *Shelley's case* (1 Rep. 936) is, that when the ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited either mediately or immediately to his heir, in fee or in tail, that always in such cases the "heirs" are words of limitation of the estate [to the ancestor], and not words of purchase; citing the *Provost of Beverley's case* (38 Edw. 2, fol. 31 b., in which reign the rule appears to have been settled; for the argument and decision in *Abel's case*, 18 Edw. 2, fol. 577, which is commonly cited as an instance of the application of the rule, clearly shew that it was not established at that time). The statement of the rule in other authorities is equally general; the only conditions being—an estate of freehold in the ancestor, and a limitation by the same instrument to the heirs.

The rule is in the main a sound rule of construction. Heirs are persons who are to take by descent; and when the fee is broken up into particular estates, a limitation to the heirs of a person who takes a prior estate of freehold, is the most obvious and sufficient mode of expressing the intention, that after the determination or defeasance of the interposed estates, the inheritance shall revert to him; and the word must have the same meaning whether the heirs are to take by way of remainder on the expiration of the intervening estate, or are to come in under a springing use or executory devise. The reason for converting this rule of construction into an inflexible rule of law, which is well stated by Hargrave to have been "to guard against the creation of estates of inheritance, with qualities, incidents, and restrictions foreign to their nature" (Law Tracts, 565), clearly extends to executory limitations equally with remainders. The law favoured descent for very obvious reasons. When the heir came in by descent, and was under age, the lord of the fee was entitled to those grand fruits of military tenure, wardship and marriage; but if the heir took by purchase, only the trifling acknowledgment for a relief was due to the lord; and at the time when the rule became established—namely, in the reign of Edward III—the heir taking by descent was bound by his ancestor's specialty debts.

An estate of freehold in the ancestor, and a limitation in the same instrument to the heirs.—The decision in *Pibus v. Mitford* (1 Vent. 372) requires a larger statement, so as to include the case of an estate of freehold not limited to the ancestor by the instrument which contains the limitation to the heirs, but left in the ancestor, out of whose fee the limitation to the heirs is to take effect; and the estate of freehold

may be an estate for life in tail or in fee. In *Pibus v. Mitford*, the ancestor having issue, Robert by his first wife, and Ralph by his second wife, covenanted to stand seised of some of his lands to the use of himself for life, with remainder to trustees for several purposes, with remainder to his wife for life, with remainder to Ralph and the heirs male of his body; and as to other lands, being those in question, he covenanted to stand seised to the use of his heirs male by his second wife. The great difficulty in the case was one which no longer exists, namely, to maintain the validity of a springing use to the heirs of a living person; and the Court got over the difficulty by implying an estate for life in the father, which, with the remainder in tail to the heirs of his body by his second wife, made a present estate tail in him. Twisden, J., dissented, because there could be no implication of an estate in a deed, and because Ralph, not being heir general as well as heir male, could not take by purchase. But if the rule extends to every case in which an estate of freehold is limited to the ancestor, or is left in him by the assurance which carves out the limitation to his heirs, there was no necessity for implying any estate; by the terms of the deed the fee remained in the covenantor, subject to the executory use raised by his covenant; and then, by force of the rule, and independently of the settlor's intention, the limitation to his heirs special took effect in himself. *Penhay v. Hurrell* (2 Vern. 370, Raithby's ed.) is a clear authority to the same effect; for, with deference to Mr. Hayes, we conceive that his construction of the limitation to A. for seventy years, if he should so long live, and after the death of A., to B. in tail, as a limitation to B. on the determination of the term, is as untenable as that of Mr. Fearn's, which it was intended to replace. The authorities, which establish the application of the rule to equitable limitations, and even to trusts of personality, conclusively shew that it is independent of the distinctions between remainders and executory limitations. (See the judgment of Sir J. Wigram, V. C., in *Harvey v. Lovell* (17 L. J., Ch., 218)).

The moral to be drawn from this discussion, and from the case of *Rhodes v. Whitehead* (13 Weekly Rep. 800) (in which a testator's children, who attained twenty-one after the death of the devisee for life, were disappointed because the limitation to the children was a contingent remainder), is, that the law might be beneficially amended by a judicious abolition of the technical distinctions between remainders and executory limitations.

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Mr. Justice Crompton died, at his residence in Hyde Park-square, on Monday morning, Oct. 30. He was promoted from the outer bar to the Bench in 1862.

Mr. R. Lush, Q. C., has been appointed one of the judges of the Court of Queen's Bench, in the place of the late Mr. Justice Crompton.

THE BIRMINGHAM MAGISTRACY.—The Lord Chancellor has added the names of ten gentlemen to the commission of the peace for the borough of Birmingham. The list includes the present mayor (Mr. Henry Wigin).

## JUDGMENT—EXECUTION—POWER OF APPOINTMENT.

(From a Correspondent).

A POWER of appointment is given to B. over certain freehold lands which are limited to C. and his heirs in default of appointment. B. fails to exercise his power, and dies insolvent, and owing certain debts on judgments entered up after the 29th July, 1864.

Query.—Are the lands so limited to C. in default of appointment by B. liable to the judgment debts of B.? Has not the stat. 27 & 28 Vict. c. 112, taken away the liability which previously existed?

The 27 & 28 Vict. c. 112, was intended to assimilate the law of real property to that of personal property in respect to judgment debts. The law as regards powers of appointment over personal property is, that in such a case as the one in question, C.'s estate would be entirely free from the debts, judgments, or otherwise, of B.

It is conceived that the provisions of the 11th and 13th sections of the stat. 1 & 2 Vict. c. 110, which enact that judgment debts shall be *binding* on all lands over which the debtor shall at the time of the judgment, or at any time afterwards, have any disposing power which he may, without the assent of any other person, exercise for his own benefit, are repealed by the 27 & 28 Vict. 112, s. 1, which provides that no judgment, &c., to be entered up after the passing of that act, shall *affect* any land (of whatever tenure) until such land *shall have been actually delivered in execution* by virtue of a writ of elegit, or other lawful authority. C.

[The enactment, that no judgment shall *affect* any land until such land shall have been delivered in execution in pursuance of such judgment, literally means that the judgment shall not create any lien on the estate or interest of the debtor, but that the execution alone shall bind such estate or interest as the debtor has at the time of execution; so that a voluntary alienation by the debtor, a devise, or a descent, before execution, would remove the land from the reach of the creditor under the judgment, leaving to him, in the case of a devise or descent, the remedy of action against the devisee or heir. This construction of the act would have been free from doubt, and would have carried the expressed object of the Legislature into full effect, if the framer or some ingenious meddler had not thought it necessary to make matters clearer by inserting an interpretation clause, which declares that "the term 'debtor' shall be taken to include husbands of married women, assignees of bankrupts, committees of lunatics, and the heirs or devisees of deceased persons." This is mere raving, unless it means that when a judgment has been obtained against a person who afterwards becomes a feme covert, a bankrupt, or a lunatic, or transmits his real estate by descent or devise, the husband, assignee in bankruptcy, committee, heir, or devisee shall, for the purposes of the act, be deemed to be identical with the original judgment debtor; from which, in some obscure way, it may be inferred that the land of the original debtor in the hands of such husband, &c., be taken in execution under the judgment. If that is so, the judgment does *affect* the land before execution, and places it in a very different position from that occupied by the goods of the debtor, which, of course, after passing into the ownership of a hus-

band, assignee in bankruptcy, executor, or legatee, could not be taken in execution under the judgment.

That the lien of a judgment on land was not intended to be wholly destroyed may also be inferred from the 4th and 5th sections of the act, which give to the execution creditor the remedy of a sale, and direct that if, upon inquiry, it is found "that any other debt due on any judgment, statute, or recognisance, is a charge on the land, the creditor entitled to the benefit of such charge, whether prior or subsequent to the charge of the petitioner, shall be served with notice of the order for sale." If this had been intended to refer only to a charge created by execution under the act, the word "execution" would have been used rather than "judgment."

On the whole, the conclusion seems to be inevitable, that the act contemplates the execution of a judgment lien on the debtor's land as against the title of a husband, an assignee in bankruptcy, an heir, or a devisee. The case put by our correspondent is not provided for; neither is that of a grantee without consideration; and it remains to be seen whether the Courts will carry out the preamble of the act (which states, that "it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates, to that affecting purely personal estate, in respect of future judgment statutes and recognisances"), as far as the interpretation clause will permit, by refusing to give any effect to a judgment as against a person claiming land by voluntary grant from the debtor, or in default of appointment by him.

It is to be observed, that the act dispenses with any registration of the judgment, but requires registration of the execution, without imposing the condition of re-registration every five years; yet, in the 4th section, it speaks of the time "while the registry of such a process shall continue in force."—Ed.]

## BETTS v. MENZIES.—PRIOR PUBLICATION OF AN INVENTION.

THE point decided, after great litigation, in the case of *Betts v. Menzies* (5 Jur., N.S., part 1, p. 1164; 6 Jur., N.S., part 1, p. 1290; 9 Jur., N.S., part 1, p. 29; 1 El. & Bl. 990, 1022; 10 H. L. C. 117) is, that when a patent is alleged to be void on the ground of a prior publication of the invention, and the process or invention so previously described is not identical with that described in the patent, it is not for the Court to determine whether the differences are material or not; but the question must be submitted to the jury upon the evidence before them. In that case it appeared that in 1804 Dobbs obtained a patent for making a combination of lead and tin, which he called Albion metal; the process of making it being described to be the passing of two ingots or plates, one of lead and the other of tin, of equal or unequal thickness, in contact, with clean surfaces, between rollers, once or oftener, until they cohered; the compound sheet thus obtained being then workable by the usual processes of rolling, hammering, or pressing. In 1849 Betts took out a patent for making a material to be employed in the manufacture of capsules and for other purposes, and the process specified by him consisted in rolling lead and tin into sheets, the tin being "about one-twentieth part of the thickness of the lead," placing the tin upon the lead, free from wrinkles, and rolling the two together until they cohere, and are reduced to the desired thickness; and he claimed as his invention "the manufacture of lead combined with tin, by rolling or other mechanical pres-



sure, as herein described." To an action by Betts for an infringement of his patent, the defence set up was the prior publication of the invention by Dobbs; but there was no evidence that any one had used the process described by Dobbs, or that it could be worked with plates of lead and tin of equal thicknesses, or of other relative thicknesses than those specified by Betts. The jury found for the plaintiff; but the Court of Queen's Bench directed judgment to be entered for the defendant, on the ground that the plaintiff's patent was void by reason of the prior publication in the specification of 1804. This decision, after being affirmed by the Court of Exchequer Chamber, was reversed in the House of Lords, because there was no evidence, and the Court had no right to assume, that the proportions stated by Betts were not material. If the proportions were material, the discovery and statement of them made a new invention, for which a patent might be sustained. The defendants, therefore, failed solely in consequence of their neglect to procure evidence (which they might easily have done) that the proportions were wholly immaterial, and the process described by Dobbs was practicable.

The case is further noteworthy as deciding this point of construction—that if a specification describes a particular method of procedure—stating, for example, certain dimensions or proportions—and the claim is for the process "as before described," it must be taken that the inventor claims the particular method or particular proportions stated, and nothing more. Therefore it would have been no invasion of the patent granted to Betts to make the material, by uniting sheets of tin and lead in any other ratio of thickness than "about 1 to 20."

### Court Papers.

#### EQUITY CAUSE LISTS, MICHAELMAS TERM, 1885.

\* \* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

#### APPEALS.

Green v. Crockett } (S., Mar.  
Crockett v. Green } 27) *S. O.*  
Nunn v. Fabain (R., May 29)  
Mortimer v. Bell (R., May 29)  
Robinson v. Clarke (R., May 30)  
Robinson v. Clarke (R., May 31)  
Davies v. Shepherd (W., June 8) *Full court*  
Blackett v. Bates (W., June 9)  
Revett v. Southampton, Isle of Wight, and Portsmouth Improved Steam-boat Co. (Limited) (R., June 23)  
Rhodes v. Bate (S., June 26)  
Cochrane v. Willis (R., June 27)  
Lawrence v. Austin (R., June 28)  
Harrison v. Collinson (R., June 28)

Seixo v. Provesende (W., June 29)  
Moss v. Anglo-Egyptian Navigation Co. (Limited) (S., June 30)  
Durell v. Pritchard (R., June 30)  
Gladholm v. Barker (R., July 7)  
Caton v. Caton (S., July 15)  
Clutton v. Strode (R., July 17)  
Greatrex v. Banton (R., July 18)  
Moss v. Anglo-Egyptian Navigation Co. (Limited) (S., July 20)  
M'Intosh v. Great Western Railway Co. (S., July 24)  
Jefferys v. Dickson (W., July 26)  
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Landon v. Tucker (S., Aug. 7)  
Nevinson v. Lennard (R., Aug. 7)  
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Southern v. Harriman (W., Aug. 9)  
Yates v. Jack (W., July 10)

Before the Right Hon. the MASTER OF THE ROLLS.

#### CAUSES, &c.

Partridge v. Wilahin (R. to ans.)  
Kelson v. Egyptian Commercial and Trading Co. (Limited) (D)  
Hodson v. Fielden (M D)  
Butler v. Grave (M D)  
Ballie v. M'Kewan (M D)  
Rucker v. Seymour (M D)  
Whitwell v. Arthy (M D)  
Greenhow v. Price (M D)  
Kemp v. Nowell (M D)  
Beck v. Palmer (M D)  
Tweedie v. Phelps (M D)  
Clarke v. Eversfield (M D)  
Ormerod v. Rostrom (F C)  
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Beresford v. Conyers (M D)  
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Thomas v. Chorley (M D)  
Summers v. Griffiths (M D)  
Goldsmid v. Tunbridge Wells Improvement Commissioners (M D)  
Stourton v. Burrell (M D)  
Ibbott v. Burrell (M D)  
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Bloxsome v. Chichester (Cau.)  
Dickenson v. Burrell (M D)  
Branford v. Howard (M D)  
Dickenson v. Burrell (M D)  
Barrow v. Tyrer (M D)  
Richardson v. Lancaster and Carlisle Railway Co. (M D)  
Goodyear v. Bruton (M D)  
Verelst v. Midland Railway Co. (M D)  
Windor v. Campbell (M D)  
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Adams v. Dudley and West Bromwich Banking Co. (Cause)  
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Att.-Gen. v. St. John's Hospital, Bath (M D, Ptn) *L. J.*  
Att.-Gen. v. St. John's Hospital, Bath (M D) *L. J.*  
Wood v. Scoles (F C) *L. J.*  
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*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

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*Before the Vice-Chancellor Sir JOHN STUART.*

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*Before the Vice-Chancellor Sir W. P. WOOD.*

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## THE JURIST.

LONDON, NOVEMBER 11, 1865.

THE liability of persons who keep wild beasts, or, with a knowledge of their propensities, animals not *feræ naturæ*, but accustomed to attack or bite mankind, or commit other injuries, has been fully treated of, and is well defined. But there is a recent case which deserves to be noticed, rather nicely separated from the class of cases alluded to, where the owner of the animal, causing mischief by an act of a vicious character, was held liable, although the animal was neither wild by nature nor proved to be habitually vicious, or, if habitually vicious, was not known to be so by the owner. This was the case of *Lee v. Riley* (11 Jur., N. S., part 1, p. 527), being a case carried on appeal from the county court to the Court of Common Pleas. In that case the defendant's mare, a large powerful animal, got out of the defendant's farm, through the defect of a gate which the defendant was bound to repair, and had strayed into the plaintiff's field, where it kicked and injured a horse of the plaintiff's so severely that it had to be killed. It was held not to be necessary, for the maintenance of the action, to prove that the defendant's mare was vicious, and that the defendant knew it. It was also held that the damage the plaintiff had sustained by the injuries to his horse was not too remote, but was sufficiently the consequence of the defendant's neglect, to be recoverable in such action. Now, a previous case of *Cox v. Burbidge* (9 Jur., N. S., part 1, p. 970), which may appear to some irreconcilable with the more recent case, was brought forward in *Lee v. Riley*, as an authority that the defendant could not be made liable unless the scienter was proved. In *Cox v. Burbidge* the facts which appeared in evidence were these:—A horse belonging to the defendant was grazing on a newly-made road which led to some houses. The plaintiff, a little boy five years old, was playing in the road, when the horse, which was on the footpath, struck out and kicked him in the face, injuring him very severely. There was no evidence to shew how the horse got to the spot, or that the owner knew he was there, or that the animal was habitually vicious, or that the child had done anything to irritate it. The declaration charged negligence, and the jury returned a verdict for the plaintiff. On a rule nisi to enter a nonsuit, it was argued, on shewing cause for the plaintiff, that it was negligence, leaving the horse unattended on the highway, and that also its being on the highway unattended, constituted a nuisance; and that, therefore, the injury and damage sustained had its origin in, and proceeded from, a wrongful act on the part of the defendant, and that he must be held liable for it. For the defendant it was contended, on the other hand, that the animal not being one of a ferocious nature, the defendant could only be liable for negligence, and for such damages as might be fairly considered as the immediate consequence of his negligence;

and that there was no evidence at all of negligence which ought to have been submitted to the jury; and that with regard to the point as to obstructing the highway, the horse was not wrongfully there as against the person injured. The Court made the rule absolute to enter a nonsuit, and the judges all concurred in this decision, though they did not all agree upon all points. Chief Justice Erle took the view, that, as between the owner of the horse and the owner of the soil on the highway, or of the herbage growing thereon, it might be assumed that the horse was trespassing; and if the horse had done any damage to the soil, the owner of the soil might have had a right of action against the owner of the horse, but that that had nothing to do with the case of the plaintiff. That there was no evidence of negligence, the simple fact found being that the horse was in the highway; he might have been there without any negligence of the owner; he might have been put there by a stranger; or might have escaped from some inclosed place without the owner's knowledge; that to enable the plaintiff to recover, there must be some affirmative proof of negligence in the defendant in respect of a duty owing to the plaintiff. But even if there was any negligence on the part of the owner of the horse, it was not at all connected with the damage complained of: that it appeared that the horse was on the highway, and that, without anything to account for it, he struck at and injured the plaintiff: that the well-known distinction applied there, that the owner of an animal is answerable for any damage done by it, provided it be of such a nature as is likely to arise from such an animal, and the owner knows it: that thus, in the case of a dog, if he bites a man or worries<sup>o</sup> sheep, and his owner knows that he is accustomed to bite men or to worry sheep, the owner is responsible; but the party injured has no remedy, unless the scienter can be proved. That that was familiar doctrine, and that it seemed to him that there was a much stronger reason for applying that rule in respect of the damage done there. That the owner of a horse must be taken to know that the animal will stray, if not properly secured, and may find its way into his neighbour's corn or pasture. For a trespass of that kind the owner is, of course, responsible; "but," said the Chief Justice, "if the horse does something which is quite contrary to his ordinary nature, something which his owner has no reason to expect that he will do, he has the same sort of protection that the owner of a dog has; and everybody knows that it is not at all the ordinary habit of a horse to kick a child on a highway. I think the ground on which the plaintiff's counsel rests his case fails. It reduces itself to the question, whether the owner of a horse is liable for a sudden act of a fierce and violent nature, which is altogether contrary to the usual habits of the horse, without more. Mr. Justice Williams, on the other hand, whilst he concurred in making the rule absolute for a nonsuit, did not take the same view as the Chief Justice

\* Though it does not affect the illustration, we may remind our readers that there is now a statute—28 & 29 Vict. c. 70—to render owners of dogs liable for injuries to cattle and sheep.

did as to the necessity of proof of actual negligence. He said, the question of negligence was immaterial, and that the general rule of law was perfectly plain, "If," said he, "I am the owner of an animal, in which, by law, the right of property can exist, I am bound to take care that it does not stray into the land of my neighbour, and I am liable for any trespass it may commit, and for the ordinary consequences of that trespass; whether or not the escape is due to my negligence is altogether immaterial. I am clearly liable for the trespass, and for all the ordinary consequences of that trespass, subject to a distinction which is taken very early in the books—that the animal is such that the owner of it may have a property in it which is recognisable by law. For instance, if a man's cattle, or sheep, or poultry stray into his neighbour's land or garden, and do such damage as might ordinarily be expected to be done by things of that sort, the owner is liable to his neighbour for the consequences." We think it may be fairly inferred, from the tenor of these observations, that if Mr. Justice Williams had thought the injury inflicted to be an ordinary consequence of the horse having been left at large, he would have held the plaintiff liable; and he proceeds with the rest of his judgment, to hold the defendant not liable, because the act of the horse was an extraordinary one, inasmuch as the injury to the plaintiff was caused by the horse having viciously kicked him, as a horse of ordinary temper would not have done; and that, taking that to be so, the plaintiff could not maintain the action, because he had not shewn that the defendant knew that the horse was subject to that infirmity of temper. Mr. Justice Willes dwelt on the distinction between animals of a fierce nature, and animals of a wild nature, which do not ordinarily do mischief like that in question; and proceeded to comment upon some of the earlier authorities, and the distinction made between animals in which a man has valuable property, and those in which he has not, expressing himself unable to concur in such distinction; concluding his judgment as follows:—"The important circumstance in this case is, that the act was not in accordance with the ordinary instinct of the animal, which was not shewn to be of a mischievous disposition. Does, then, the fact of the horse being in the highway make any difference? No doubt if the horse was trespassing there, the owner of the highway might have an action against the owner of the horse. So, possibly, the owner of the horse might be liable to an indictment for obstructing the highway, or to a fine. But that was not the cause of the mischief here. It comes round, therefore, to the question, whether the owner is liable for an act of this sort, done by an animal not naturally of a vicious character, and which is not found to have been accustomed to commit such mischief. I think the rule must be made absolute to enter a nonsuit." Neither Mr. Justice Williams nor Mr. Justice Willes took part in the decision of *Lee v. Riley*, which followed this case.

The one point in which all the judges were agreed in *Cox v. Burbidge* was, that the defendant could only be made liable for the ordinary consequences of a horse straying abroad. And it would almost seem

that the view the Court took of ordinary consequences was, that they must be confined to injuries to the soil, damage to corn, herbage, breaking fences, and other damage of the like nature, which an animal mansuetæ naturæ might be expected to commit, and for which the owner of the soil would have a right to recover; but that for any act of ferocity, the vicious habit and the scienter must be proved before the owner could be held liable. If this view were the view, and had been adhered to in both the cases referred to, both would have had the same result, and would have stood consistently on the same grounds, and a well defined boundary line of liability would have been drawn. But once let in any act of a vicious character, such as fighting or killing another horse, or kicking a child, and the difficulty at once springs up, how to make out any satisfactory legal distinction between such acts. The two decisions referred to both rest on the doctrine of ordinary consequences. It is true, that in *Lee v. Riley* there was a trespass on the land of the plaintiff to whom the horse that was injured belonged; but this would not have given any right of action for the injury complained of, unless it had been held that the kicking and destroying of one horse by the other was an ordinary consequence of the trespass committed. And the governing point in *Lee v. Riley* was, that it was an ordinary consequence that one horse should kick and destroy the horse of the owner of the field into which it had trespassed, just as much as the governing point in *Cox v. Burbidge* was, that it was not an ordinary consequence of the horse straying on the highway that it should kick and severely injure a child there. The two cases can only coexist as authorities by a contrast and comparison of consequences; and this shews the difficulty that is encountered when the boundary line adverted to is once passed, and the exposition by the learned judges of the habits of horses, can be met by observations such as these. Horses are constantly taken into agistment, and put with other horses, without any fear of the consequences, unless a horse has some particular vice or tendency which renders it unsafe with others. That horses are naturally gentle, and like company. That, on the other hand, a horse straying on the high road, and enjoying his liberty there, is more disposed to kick if approached too closely than on most other occasions; and that passengers on the road generally take care to avoid him—an exercise of caution not to be expected from a child five years old. We would be understood by this as endeavouring to shew on what uncertain grounds any effort to distinguish between one act of ferocity and another must necessarily rest, and that the distinctions made by the two cases referred to present no certain bounds, and no safe rule for future guidance.

In conclusion, we would observe, that, assuming that the decision of *Lee v. Riley* is adhered to, as consistent with *Cox v. Burbidge*, still, as precisely the same facts rarely ever occur twice, the probability is, that in every case that may hereafter arise, as to trespasses committed by animals mansuetæ naturæ, left at large or straying abroad, the question, whether the particular injury complained of is or is not an ordinary consequence of the trespass, will be an open one, to be dealt with according to the particular facts of each case.



## DAYS OF GRACE ON PROMISSORY NOTES.

It is the custom of the judges of the common-law courts to be tolerably facile in granting rules nisi, whenever *prima facie* meritorious and fairly arguable cases are submitted for their consideration. At the same time it is their duty firmly to discountenance all attempts to set up objections which have been distinctly overruled on former occasions, or are clearly untenable in principle, and are, therefore, vexatious and frivolous. These remarks are suggested by a motion made in the Court of Exchequer on the 3rd November, in the case of *Miller v. Biddell and Another*. It was an action upon a promissory note, tried before the Recorder of London, in the Lord Mayor's Court, when a verdict was entered for the defendants, with leave to the plaintiff to move to enter a verdict for him, on the ground that, as the note was not payable to bearer or to order, but simply promised to pay a sum of money by instalments to the plaintiff, it was not a negotiable instrument, and it was not open to the defendants to claim the three days of grace allowed in the case of promissory notes as in the case of bills of exchange, since the passing of the statute 3 & 4 Ann. c. 9. The note in question was payable by instalments, and if the first instalment were not paid on the day named in the note, the defendants were to pay the whole sum at once. It appears that the first instalment was tendered within three days after it became due, but was refused by the plaintiff; and the question to be decided was, whether such tender was a good legal tender. The Court thought that there was room for argument, and granted the rule.

It is settled by the case of *Oridge v. Sherborne* (11 M. & W. 374) and other authorities, that the maker of a negotiable promissory note, payable by instalments, is entitled to the three days' grace, upon the falling due of each instalment, and the only question in the case under consideration was, whether the maker of a promissory note can claim the three days' grace if the note is not negotiable.

Now, it has certainly been the universal custom of merchants to allow the days of grace to promissory notes which are not transferable by indorsement or delivery; and it has also been laid down, without qualification, by learned text-writers, that promissory notes, as well as bills of exchange, are allowed the days of grace.

Thus, in Bayley on Bills, 244, 5th ed., "a bill or note, purporting to be payable within a limited time after a certain event, or on a given future day, or at sight, is not, in fact, payable until two days after the expiration of that time; nor, unless the third day be a day of public rest, until three." So, in Smith's Merc. Law, 246, 7th ed., "a bill or note, importing in its terms to be payable within a limited time after a certain event, e. g. after sight, or on a particular day, or at sight, is not really payable till three days afterwards, unless the third day be a day of public rest," &c. Again: in Byles on Bills, 191, 8th ed., "days of grace are allowed on promissory notes as well as on bills. They are allowed, whether the bill or note be made payable on a certain event, or at a certain day, or at a certain number of years, months, weeks, or days after date, or after sight, or at usance, or by instalments."

Having, so far, had the benefit of the leading text-writers on the subject, we will now refer to one or two of the principal cases which establish, that promissory notes made payable to A. B. (without the words or "to bearer" or "to order") are within the stat. 3 & 4 Ann. c. 9. There is a case on this subject so far

back as 1728, namely, *Burchell, Administrator of William Burchell, v. Blocock* (2 Ld. Raym. 1545). There, the defendant and one Thomas Williford, on the 24th March, 1725, "*federunt quandam notam suam in scriptis vocatam, 'a promissory note,' manibus suis propriis adiude subscriptis;*" by which note the said makers, "*conjunctim et divisim promiserunt solvere, to the said William Burchell, 10*l.* 12*s.*, in three months after the date of the said note; 'valore recepto, ratione quorum quidem promissorum, necnon vigore statuti,'* &c. To this the defendant demurred, and shewed for cause, that the note set out was not a promissory note within the statute. But the Court held it clearly to be a promissory note, within the stat. 3 & 4 Ann. c. 9, and gave judgment accordingly for the plaintiff. Again: in the case of *Bribton v. Harraden* (4 T. R. 148), the Court of Queen's Bench decided, that the stat. 3 & 4 Ann. c. 9, placed promissory notes on the same footing as bills of exchange; and Lord Kenyon, in the course of an elaborate judgment, said, "that the operative part of the statute of Anne proceeds to say, that the holders may maintain actions on promissory notes, in such manner as they might upon inland bills of exchange; in short, they were wholly to assume the shape of inland bills of exchange;" and Ashurst, J., said, "I confess it is a matter of astonishment to me that this question could ever have admitted a doubt, since the statute of Anne, which was passed in order to put promissory notes on the same footing with bills of exchange in all respects." And Grose, J., gave his judgment to a similar effect. Lastly, in the case of *Smith v. Kendall, Executor of Askew* (6 T. R. 123; 1 Esp. 230), the note was as follows:—"Three months after date I promise to pay Mr. Smith, currier, 40*l.*, value received, in trust for Mrs. E. Thompson; as witness my hand, L. Askew, 25th June, 1787."

Lord Kenyon, in the course of his judgment said, "It was decided in a case in Lord Raymond" (*Burchell v. Blocock*, 2 Ld. Raym. 1545, above cited), "on demurrer, that a note payable to B, without adding 'or to his order or to bearer,' was a legal note within the act of Parliament (3 & 4 Ann. c. 9). It is also said in *Marius*, that a note may be made payable either to A. or bearer, A. or order, or to A. only. In addition to these authorities, I have made inquiries among different merchants respecting the practice in allowing the three days' grace; the result of which is, that the Bank of England and the merchants in London allow the three days' grace on notes like the present. The opinion of merchants, indeed, would not govern this Court in a question of law; but I am glad to find that the practice of the commercial world coincides with the decision of a court of law. Therefore, I think that it would be dangerous now to shake that practice (which is warranted by a solemn decision of this Court) by any speculative reasoning upon the subject."

Here we have a distinct and solemn decision on the very point which is now treated as open to discussion, and a decision which, down to the present time, has uniformly governed the opinion of lawyers, and the usage of the mercantile community; and it might have been expected that the Court, instead of granting a rule nisi, would have made some forcible observations on the impropriety of bringing an action which could be expected to be fruitful only to the attorneys and counsel engaged in it. No one can entertain any doubt as to the ultimate result; but there was a time when the Court of Exchequer felt itself strong enough to dispose of speculative actions and speculative objections, without assistance, in a very summary manner.

As the Court of Exchequer thinks this subject worthy of argument, no apology need be offered to our readers for discussing it here.

## THE COUNCIL OF LAW REPORTING.

IN order to make intelligible the following remarks on the proceedings of the Council of Law Reporting, we must reprint the material provisions of the scheme of reporting recommended by the Bar Committee, and adopted at the meeting of the Bar, held on the 28th November, 1864:—

"1. The reports recommended by this committee shall be placed under the general management and control of a council composed of members to be appointed as follows:—Two by Lincoln's Inn; two by the Middle Temple; two by the Inner Temple; one by Gray's Inn; one by Serjeant's Inn; and two by the Incorporated Law Society; and in the event hereinafter mentioned, two more to be appointed by the Lord Chancellor. The council shall include also the Attorney and Solicitor General and the Queen's Advocate for the time being as *ex officio* members.

"4. It is desirable that the council be incorporated by act of Parliament or charter. The council shall have the assistance of a paid secretary, and the Inns of Court shall be requested to guarantee the payment of such secretary's salary, and the office and other expenses of the council (not exceeding together 500*l.* per annum), in the proportions following; viz.—

Lincoln's Inn . . .	Two-sevenths.
Inner Temple . . .	Two-sevenths.
Middle Temple . . .	Two-sevenths.
Gray's Inn . . .	One-seventh.

"7. The Common Law and Equity Reports shall be published in monthly parts respectively, and the Appellate Reports as often as shall be found convenient. The November parts shall comprise, as far as practicable, every decision not before reported up to the rising of the Courts for the long vacation.

"8. The council shall have power, if they should find it desirable, to establish, in connexion with the permanent reports above mentioned, a weekly set of reports.

"9. The staff of editors and reporters, and their salaries, shall be as follows:—

Two editors, at 600 <i>l.</i> each . . .	£1,200
Reporters:—	
2 House of Lords.	
1 Privy Council.	
3 Lord Chancellor and Lords Justices (including Bankruptcy and Lunacy).	
2 Queen's Bench (including appeals therefrom to Exchequer Chamber).	
8 . . at 500 <i>l.</i> each . . .	4,000
2 Rolls.	
2 Vice-Chancellor Kindersley.	
2 Vice-Chancellor Stuart.	
2 Vice-Chancellor Wood.	
2 Common Pleas (including appeals therefrom to Exchequer Chamber).	
2 Exchequer do. do.	
12 . . at 400 <i>l.</i> each . . .	4,800
1 Crown Cases Reserved . . .	100
1 Admiralty and Ecclesiastical . . .	100
2 Probate and Matrimonial, at 250 <i>l.</i> each . . .	500
	2) £10,700
First moiety (see rule 10) . . .	£5,350

"10. One moiety of these salaries (hereinafter referred to as the 'first moiety') shall be paid, in all

events, by equal quarterly payments to the editors and reporters; and the other, or 'second moiety,' at the end of each year out of the profits of that year, so far as the same may be sufficient for that purpose: provided that the salaries or emoluments received by the House of Lords reporters from the House shall be brought into account, and taken in part payment of the salaries hereinbefore provided for them.

"11. The editors and reporters shall be barristers, and shall be appointed and removable by the council; but the appointment of the reporters in each court shall be subject to the approval of the chief or presiding judge.

"12. The existing authorised reporters shall have the offer of the first appointments in their respective courts, and in other appointments of reporters a preference may, if the council think fit, be given to the reporters of any publication which may be discontinued in consequence of the issue of the reports recommended by the committee.

"15. Subject to rule 11, the editors and reporters shall be appointed for a term of five years, and they shall be eligible for reappointment; but this limit of time shall not extend to such of the present authorised reporters as may accept appointments as reporters under this scheme.

"20. The profession shall be invited to subscribe to the reports at the following scale of prices, payable in advance, viz.—

	Per Annum.
For the entire set . . .	£5 5 0
For the common-law series . . .	3 3 0
For the equity series . . .	3 3 0
For the appellate series . . .	2 2 0

and for any sub-divisions which the council may think fit to make, at such prices as the council shall determine.

"21. Such invitations shall contain an announcement that it is considered essential for carrying out the scheme that the aggregate amount of subscriptions, inclusive of any advance from the Consolidated or Sutors' Fund, in respect of the first moiety of the salaries or otherwise, shall reach 10,000*l.* at the least.

"22. If such subscriptions, inclusive as aforesaid, shall fall short of 10,000*l.*, the subscription list may be cancelled, and fresh invitations issued for subscriptions at increased prices, not exceeding double the above scale.

"23. The prices to non-subscribers shall be one-third more than those charged to subscribers.

"25. Authority shall, if possible, be obtained for the payment out of the Consolidated or the Sutors' Fund of the first moiety of the salaries of the editors and reporters, the same to be repaid out of the price of the copies supplied to the Government, and, so far as that may be insufficient, out of the proceeds of the sale of the reports as hereinafter mentioned. In case such authority is obtained, the Lord Chancellor shall have the appointment of two additional members of the council, as mentioned in rule 1.

"26. The council shall have the power to make such arrangements as will lead to the discontinuance of any set of existing reports, and for discharging the consideration of the same by payments, during a limited period, out of profits, but not in priority to the payment directed to be made by articles 1, 2, 3, of rule 29.

"27. The council shall contract with one or more publishers or printers, who shall undertake all the trouble and risk of the publication, sale, and distribution of the reports, receive the subscriptions, pay all expenses, and account to the council quarterly; such accounts to be examined and audited by the council, with such assistance as they may require.

"28. In case payment of the first moiety of the salaries shall not be obtained out of the Consolidated or Suits' Fund, it shall be made a term of the contract with the publishers or printers, that they shall pay such moiety by equal quarterly payments, and be reimbursed the same out of the proceeds of the sale of reports, as hereinafter mentioned.

"29. The proceeds of the sale of reports, and other profits therefrom, shall be applied as follows:—

1. In defraying the expenses of the publication, sale, and distribution, including the commission or other remuneration agreed to be given to the publishers or printers, and the first moiety of the salaries, if paid by them;
2. In payment or (if previously paid under the guarantee) in reimbursement to the Inns of Court of the secretary's salary, and other expenses of the council;
3. In making good to the Consolidated or Suits' fund (if paid thereout) so much of the first moiety of the salaries of the editors and reporters as shall not be covered by the price of the copies of reports supplied to the Government;
4. In payment of the second moiety of the salaries of the editors and reporters; and of the consideration, if any, agreed to be given for the discontinuance of any existing reports, under rule 26, in such order and priority as the council shall have arranged:

Lastly, In augmenting the salaries of the editors and reporters, or such of them (if any) as the council shall consider proper to be augmented, or in constituting a reserve fund to meet future contingencies, or in such other way as the council in their discretion shall consider best calculated to improve the system of reporting.

"31. The accounts shall be audited yearly by an auditor to be appointed by the editors and reporters, and, subject to such audit, the council shall ascertain and settle the amount payable to the editors and reporters in respect of their salaries.

"32. The council shall prepare and publish annually a financial statement and report of the results of the working of the system."

The exact carrying out of the scheme has become impossible, by the refusal of Gray's Inn and Serjeant's Inn to appoint members of the council. The proportion of the guarantee of the council expenses, which was to have been contributed by Gray's Inn, have been more than made up by the guarantee of the Law Institution, to the extent of 125*l.* per annum.

The Government has refused to lend any assistance to the scheme.

The representatives of the Inns of Court and of the Incorporated Law Society, in conjunction with the Attorney-General, the Solicitor-General, and the Queen's Advocate, assuming (as we think, properly) to act on behalf of the profession as the council contemplated by the scheme, issued in March last a preliminary address to both branches of the profession, inviting subscriptions. On the 5th August the council announced that their series of reports would be commenced as from the first day of Michaelmas Term, 1865. They have since completed their staff of reporters, and have submitted to the judges an address requesting their approval of the reporters, and their assistance in carrying out the scheme. A copy of this address will be found at the end of these remarks. Four of the law publishers had previously sent to the council an address, which we also reprint. The judges of the Courts of Queen's Bench and Exchequer have, we understand, declined to make any alteration in their relations or behaviour to the reporters, regular and

irregular; so that Messrs. Best and Smith in the Queen's Bench, and Messrs. Hurlstone and Coltman in the Exchequer, who have not come to an agreement with the council, will continue to be the recognised reporters of those courts, and the new reporters will have no further privileges than those already accorded to the gentlemen who report for the Law Journal, The Jurist, &c.

The Bar Committee scheme contemplates a subscription to the extent of 10,000*l.* per annum as a condition precedent to the commencement of operations. By the address of March subscriptions are invited on the footing of a minimum of 10,500*l.* It is understood that little more than half that amount has been subscribed. All that the council have said on the subject is contained in the following passage in their address to the judges;—"The council have invited subscriptions for that purpose, and obtained them to an amount which would have considerably exceeded 10,000*l.*, if the Government guarantee contemplated by that clause had been obtained;" and in the subsequent statement, that the subscriptions exceed the first moiety of the salaries, viz. 5350*l.* The Government guarantee contemplated was a guarantee to the full extent of the first moiety of the salaries.

The subscriptions are eked out by a guarantee, signed by members of the profession. "This fund," it is stated, "now reaches 2000*l.* per annum." We do not understand the statement. We have ourselves subscribed to the fund in question, but it was under the impression that we had signed for a fixed sum, not for an annual guarantee. There is, moreover, an obvious and essential difference between a guarantee subscription and the subscriptions of customers. Thus, we have at present subscriptions for value and guarantee subscriptions together, to an amount exceeding 7350*l.* per annum; and upon this, contrary to the express provisions of the scheme, they are about to commence operations, instead of cancelling the subscription list, and commencing anew on a higher scale of prices, as the 22nd clause requires them to do. They say, indeed, that "the printers have engaged to make up the full subscription to 10,000*l.*, and to look exclusively to the surplus subscriptions for payment of their charges for printing and paper." What making up the full subscription to 10,000*l.* means, we do not understand. By the 28th article, the publishers are to guarantee the first moiety of the salaries, and the subscriptions already exceed that amount. We think the committee would have been justified in thus departing from their instructions, if they had obtained the concurrence of all the regular reporters, or of all except Mr. Beavan, and the support of the principal law publishers, or, indeed, of any influential firm of law publishers. But they are now exposed to the formidable opposition of those able and experienced reporters, Messrs. Best and Smith, and Hurlstone and Coltman, and of the entire law publishing trade, who, we hear, are likely to promote the establishment of a combined series of regular and authorised reports in all the common-law courts.

The 11th clause of the scheme provides that the reporters shall be removable by the council. And Messrs. Best and Smith and Hurlstone and Coltman properly decline changing their present position for one dependent on the pleasure of the council. They have, we understand, offered to concede the power of dismissal with the approval of the judges or of the presiding judge of their respective courts; and they have even offered to refer the question in dispute to the arbitration of the judges. But the council reject both proposals, on the ground that they have no authority to depart from the terms of the scheme. This might have justified them in convening a meeting of

the Bar to sanction the waiver of a condition which was, doubtless, never intended to apply to the present authorised reporters; but it is simply ridiculous on the part of a council, which is not the council contemplated by the scheme, and which is acting in direct defiance of one of the most important provisions in the scheme—a provision intended to guard against the very evil which the obstinacy of the council is now likely to occasion—*in addition to the present number of competing reporters.* We think in this dispute the council are entirely in the wrong. If the want of authority really weighs with them, it can be readily supplied by calling a meeting of the Bar for that special purpose.

The complaint of the law publishers is, that the terms which have been concluded with Messrs. Clowes were never offered to them, and that an arrangement has been made by which the trade in law reports, hitherto enjoyed by them, is intended to be given over to strangers. In this matter also, if our information is correct, the council appear to be in the wrong. It was clearly both their duty and their policy to interfere, with existing arrangements and vested interests as little as possible, and, in particular, to make every effort to conciliate and secure the co-operation of the booksellers. Instead of doing that, they made, as we are told, in an informal and indirect way, a proposal of terms wholly different from those given to Messrs. Clowes, and inadequate; thus effectually preventing the offer the want of which they now profess to regret.

In this exciting opposition, where they might have secured material support, the council appear to have acted unreasonably and unwisely; and if the present position of their undertaking is not very hopeful, the fault is not in the scheme so much as in their conduct of it.

*To the Right Honourable and Honourable the LORD HIGH CHANCELLOR and the several JUDGES of Her Majesty's Courts of Law and Equity at Westminster, the following Address of the COUNCIL OF LAW REPORTING is respectfully submitted:—*

THE Council of Law Reporting, as the judges are no doubt aware, owe their existence to a scheme for the amendment of the present system of law reporting, which was approved and adopted by the bar at a general meeting convened for the purpose by the Attorney-General, and held under his presidency on the 28th November, 1864.

The scheme itself was the result of the labours of a committee of barristers appointed at a meeting of the bar, convened and held under the same authority on the 2nd December, 1863, for the purpose of considering and preparing a plan for the amendment of the present system; and that system had, by a previous resolution of the same meeting, been pronounced to be unsatisfactory, and to require amendment.

The committee thus appointed consisted of twenty-two members of the bar—ten of them members of the inner bar, and twelve of the outer bar. Of the ten members of the inner bar, six, including the Queen's Advocate, represented the common-law bar, and the remaining four the equity bar. Of the twelve members of the outer bar, two represented the body of practising conveyancers, five the common-law bar, and five the equity bar. The professional position of the several members of the committee was such as to place its character beyond the reach of objection, or even cavil.

The meeting which appointed this committee was convened by the present Attorney-General, upon a requisition signed by 382 members of the bar, in-

cluding, with only three exceptions, all the leaders of the Chancery Bar, and about twenty-five leaders of the Common-law Bar. And the meeting itself was attended by upwards of 700 members of the bar.

The scheme of amendment recommended by the committee, and afterwards approved by a general meeting of the bar, was the result of six months' assiduous and gratuitous labour on the part of the committee.

These facts are referred to for the purpose of shewing that the Council of Law Reporting has its origin in a deliberate and sustained effort of the bar to discover and carry into effect a remedy for a very great evil, involving much public mischief arising from the uncontrolled use of one of the important exclusive privileges of the bar, namely, the privilege of reporting the decisions of our superior courts of justice for citation as authority. The proceedings which followed originated and were conducted under the auspices of the Attorney-General, as the proper leader of the bar, and conducted throughout in a manner becoming their importance, and solely with the view of helping to accomplish a public object which has been long desired, but hitherto deemed impracticable.

The scheme, thus prepared and approved, contemplated the co-operation, in the Council of Law Reporting, of the four Inns of Court, Serjeants' Inn, and the Incorporated Law Society.

The benchers of Gray's Inn declined to co-operate, stating as their reason that they had not sufficient confidence in the scheme to give it their support.

Serjeants' Inn declined to send a member to the council, the judges, members of that inn, considering, as it is believed, that in the then stage of the matter it would not be desirable to adopt any proceeding which might be regarded as a premature interference on their part.

The other three Inns of Court and the Incorporated Law Society appointed members of the council, as proposed by the scheme; and these members, so appointed, with the concurrence of the Attorney-General, the Solicitor-General, and the Queen's Advocate, as ex officio members, have undertaken the duty of endeavouring to give effect to the public improvement contemplated by the scheme.

It is proposed that the reports shall be placed under the management and control of the council; that they shall be prepared by reporters, under the supervision of editors, all being barristers of reputation and experience; that they be published in monthly parts, with regularity and promptitude; and so that, as far as practicable, there be no arrears; and that the remuneration of the editors and reporters be by salaries, with provision for future increase to an amount, as it is hoped, commensurate with the value of their professional services, and so as to leave them no longer exposed to the risks, uncertainties, and exactions which have been found to be inherent in every system which makes law reporting a commercial adventure, involving a trade profit.

The council have been enabled to make financial arrangements for the establishment of the proposed reports, which place the interests of all those members of the bar, whose services will be engaged as editors and reporters, beyond the reach of any commercial risk.

For special reasons, the council feel it due to themselves, and right to the profession, to state the general nature of these financial arrangements. The council have always considered themselves bound to give effect to the provisions of the bar scheme, according to their true intent and meaning, with the view of accomplishing (if practicable) the prime object of the scheme, namely, the establishment of one complete set of re-

ports under professional control. By the 21st clause of the scheme, it is contemplated that, for the establishment of the reports, a subscription of 10,000*l.* is essential. The council have invited subscriptions for that purpose, and obtained them to an amount which would have considerably exceeded 10,000*l.*, if the Government guarantee contemplated by that clause had been obtained. It was, however, found impossible to obtain that guarantee; and that being so, the council might, had they been so minded, under the terms of the 22nd clause, have cancelled the list, and abandoned all further proceedings; but with the full concurrence, or rather at the urgent request, of many members of the bar, they have not done so. They have resorted to the authority given to them by the 27th and 28th clauses of the scheme. And having, to their great regret, received no offer of assistance from any of the London law publishers, they have entered into arrangements with a firm of printers, of large capital, skill, and experience (Messrs. W. Clowes & Sons, of Duke-street, Stamford-street), under which the publication, sale, and distribution of the reports are undertaken, at the entire risk of the printers, for an agreed commission of moderate amount. The receipt of the subscriptions is retained by the council, in order that the moneys may be applied by them, and not the printers, to the payment to the editors and reporters of the first moiety of the salaries which by the scheme is proposed to be guaranteed. The sum already subscribed for exceeds the amount of this first moiety; but in order that there may be no risk or uncertainty whatever in this payment to the editors and reporters, a guarantee fund has been formed, by the voluntary subscription of members of the profession. This fund now reaches 2000*l.* per annum, and is exclusively devoted to the editors and reporters. It was first signed by the Attorney-General (Sir Roundell Palmer), afterwards by the Lord Justice Turner, Vice-Chancellor Kindersley, and Vice-Chancellor Wood; and after having been also signed by many leading members of the bar, has been since signed by the Lord Chancellor, for a larger amount than any other individual guarantee. The printers have engaged to make up the full subscription to 10,000*l.*, and to look exclusively to the surplus subscriptions for payment of their charges for printing and paper. These charges have been settled at fixed rates of moderate amount. These arrangements the council confidently represent as amply sufficient to place the establishment of the proposed reports upon a firm financial basis, and one perfectly satisfactory to the editors and reporters appointed.

Having thus completed their financial arrangements, the council, on the 1st August last, resolved that the proposed reports should commence upon the first day of Michaelmas Term next; and, in pursuance of that resolution, have selected the following gentlemen as editors and reporters, subject to the approval of the judges, as proposed by the bar scheme:—

*Editor, Common Law.*

J. R. Bulwer, Esq., Q. C.

*Editor, Equity.*

G. W. Hemming, Esq.

*House of Lords.—English and Irish Appeals.*

Charles Clark, Esq.

*Scotch Appeals.*

J. F. Macqueen, Esq.

*Privy Council.*—(This appointment is under consideration).

*Courts of the Lord Chancellor and Lords Justices.*

Cadman Jones, Esq., Martin Ware, Esq., and R. Horton Smith, Esq.

*Court of Queen's Bench, including Appeals therefrom to Exchequer Chamber.*

William Mills, Esq., and Henry Holroyd, Esq.

*Court of the Master of the Rolls.*

Charles Maret, Esq., J. H. Fordham, Esq., and James Stirling, Esq.

*Court of the Vice-Chancellor Kindersley.*

T. W. Gunning, Esq., and J. J. Smale, Esq.

*Court of the Vice-Chancellor Stuart.*

J. W. De Longueville Giffard, Esq., and T. F. Morse, Esq.

*Court of the Vice-Chancellor Wood.*

J. B. Davidson, Esq., F. G. A. Williams, Esq., and W. D. Griffiths, Esq.

*Court of Common Pleas, including Appeals to Exchequer Chamber.*

John Scott, Esq., and H. W. Bompas, Esq.

*Court of Exchequer, including Appeals to Exchequer Chamber.*

James Anstie, Esq., and Arthur Charles, Esq.

*Crown Cases Reserved.*

L. W. Cave, Esq., and Hon. E. Chandos Leigh.

*Admiralty and Ecclesiastical.*

W. Ernst Browning, Esq.

*Probate, Matrimonial, and Divorce.*

Dr. Tristram and R. Searle, Esq.

In the selection of these gentlemen, the council have been guided wholly and exclusively by the directions of the scheme, and the merits and fitness of the gentlemen chosen. The existing authorised reporters for the several courts have, therefore, been invariably preferred wherever they have consented to accept the appointment; and the council have every confidence in the ability and competence of all the selected, faithfully and satisfactorily to discharge their duties.

The council have to regret that, after every possible effort within the authority with which they are invested to secure the services of the present authorised reporters for the Courts of Queen's Bench, and Exchequer, and the Rolls Court, they have been unable to prevail upon those gentlemen to accept the appointment.

The judges will, no doubt, recognise the important result which will at once be realised from the acceptance of the appointments by so many of the authorised reporters, namely, the discontinuance, from the first day of Michaelmas Term next, of ten sets of reports, which have been hitherto published separately, each independently of the other, at irregular and sometimes long-protracted intervals, and at an immoderate cost.

The object of the bar scheme being the careful preparation of one complete set of reports, by the most able and experienced reporters, under independent professional control, to be published with expedition, regularity, and uniformity, and at the moderate cost of five guineas a year for the entire work, the council venture, on behalf of the profession, to present it to the judges as a matter of public interest and importance, and calculated to uphold the real interests of the bar, by subjecting the exercise of one of its most important privileges to those restrictions which the public good, the true consideration for the privilege, requires; to facilitate the administration of justice, by simplifying and purifying the sources of the law, and thus ultimately to lead to important amendments in the law itself.

For the furtherance of this object, and upon public

grounds alone, the council, by this address, respectfully and earnestly request the sanction and support of the judges, for the following purposes:—

1. That the judges will approve of the appointment of the several gentlemen named as reporters to the several courts for which they have been selected.

2. That the judges will be pleased to permit the editors and reporters to have access to, and the use of, their written judgments, and all such papers as the judges can control; and will also, so far as convenient and agreeable to the judges themselves, revise their unwritten judgments before publication.

And 3dly. That the judges will recognise the editors and reporters, as members of the bar exercising a professional privilege for a public object, under responsibility, through the council, to the judges, the bar, and the profession at large.

By order of the Council,  
(Signed) FITZROY KEELY,  
Chairman.

*The following Communication has been addressed to the Council for Law Reporting.*

GENTLEMEN,—When some members of the Chancery bar first agitated the question of a New Series of Law Reports, to be based upon the ruin of all existing ones, and procured the appointment of a committee to inquire into the means by which the idea could be carried into effect, the law publishers were applied to, to furnish the necessary information. The statistics required by the secretary of the committee involved a statement of private business matters, which the law publishers did not think it expedient to render, the more especially as the avowed object of the inquiry implied the annihilation of a considerable portion of their incomes. The scheme at the time appeared too crude ever to ripen into success, wanting, as it seemed to do, the most material element—the countenance of the bench—feebly, if at all, supported by the common-law bar, and threatening merely to add another series to the already over-stocked market. The publishers, therefore, as prudent men of business, could not be expected to adopt or encourage an enterprise which seemed to be deficient in the elements of financial success. But even in its original crude form, and before the sanction of any of the judges or of the law reporters had been obtained, no distinct or formal proposition was made to the law publishers; and the terms which have been offered to a stranger to the business have never been submitted to them.

To the law publishers the profession owe the first publication of regular reports; their subsequent decline, arising from protracted appearance and lengthiness, must be placed to the credit of the reporters themselves. The unprofitable increase in the number of series is also due to the members of the profession, as the following statement will shew:—The Law Journal belongs to a select coterie of barristers; The Jurist was promoted and started by the late Sir John Jervis; the Law Times is the property of a barrister; the Solicitors' Journal was launched by a professional company; and the New Reports were commenced by the co-operation of a body of young barristers. With these preliminary observations, rendered necessary in order to absolve the law publishers from the imputation of having caused the existing evils, they beg respectfully to point out to the council the injustice which will be done by the announced system of publication, and to pray them to reconsider the effect and policy of their plans.

First, the council have withdrawn nearly all the regular reporters from their long-standing

engagements with the law publishers, and induced them to terminate abruptly a connexion which has existed for very many years. These gentlemen are to form the staff of the New Reports.

Secondly, the council have made arrangements with a printer, totally ignorant of, and unconnected with, the law trade, for printing and issuing direct to the subscribers the New Reports, upon terms which must utterly exclude the law publishers, and all others, from the usual trade allowance, but which may not necessarily secure a corresponding economy in the expenses of printing and publishing the reports.

The first of these measures does not shew a very close regard for existing interests, as the law publishers, who are the only parties prejudicially affected, are utterly lost sight of; but it is different with the second measure—from that (if the scheme succeeds), a wider injustice is impending. The retailers' profit is an institution of great antiquity; in the law trade it is older than the Year Books, and has always been respected by monopolist as well as freetrader. From the Statutes at Large down to the penny papers, the dealer has always been allowed his profit; and the law publishers cannot think it politic on the part of the council, to shut out the whole trading community in favour of one house, and thus create a feeling of antagonism, which may prove fatal to their undertaking, and it certainly is not acting with that due regard to existing interests which is promised in their circular.

The law publishers have long felt the objections to the existing system of reporting, and many years ago they sent a deputation to the late Lord Campbell, with a view to obtain the concurrence of the judges in some scheme for its amendment; but they received no encouragement. On another occasion, they attempted to effect a combination of the regular reporters; and they think they are not well used in being passed over, when some of the obstacles to success have been removed.

The publishers whose names are appended to this address respectfully submit, that they are willing to become, as a united body, the publishers of the New Law Reports upon fair and equitable terms, open to arrangement; and they propose, as no contemptible element of success in establishing the scheme, to place all the powers of their respective establishments, long accustomed to the trade, in the colonies, in the country, and in town, at the service of the council, for securing the widest possible circulation for the new publication, and discouraging whatever opposition may exist now and hereafter.

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NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE, AND THE SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.—The opening meeting of the Department of Jurisprudence and Amendment of the Law will be held at 1, Adam-street, Adelphi, on Monday next, the 13th instant. An address will be delivered by Mr. G. W. Hastings, General Secretary of the Association. The chair will be taken at eight o'clock, P.M.



CAUSES ENTERED AFTER THE FOURTH  
DAY OF MICHAELMAS TERM.

## COURT OF QUEEN'S BENCH.

## NEW TRIALS.

Midd.—Springett v. Balls	Surrey—Jeffs v. Day
— Filtham v. England	Derby—Brough v. Lord
Lond.—London, Brighton, & South Coast Railway Co. v. Williams	— Scarsdale
— Sandeman & ors. v. Scurr & ors.	Carmarthen—Williams & ors. v. Evans
— Cleveland Iron Co. (Limited) v. Stephenson	Cambridge—Kemp v. Waddingham & an.
— Morgan v. Chetwynd	Newcastle—Henderson & ors. v. Whitfield
— Hibbs v. Ross	Lancaster—Bainbridge v. Dobson
— Double v. Reynell	Manchester—Micklenberg v. Gloyer
— Strong v. Berry	— Kelly v. Sherlock
— Nash v. Hay	Liverpool—Bates v. Hewitt
Surrey—Castrique v. Fraisse	— Lunt v. London & North-western Railway Co.
— County Gas Co. v. Mare	
— Chambers v. Reid	

## CROWN PAPER.

Durham .....	Overseers of Hilton and Wakefield, Apprs., Overseers, &c. of the Township of Bowes, Resps.
Derbyshire .....	Reg. v. Guardians of Glossop Union.
Essex .....	Flowers, App., Raine, Resp.

## COURT OF COMMON PLEAS.

## DEMURRER PAPER.

Wednesday, Nov. 15.	Great Western Railway Co., Apprs., Redmayne, Resp. (Ap. from County Court)
Anglo African Co. (Limited) v. Lamzed & ors. (D.)	Skellett v. Fletcher (D.)
Ray & an. v. Wheeler & an. (Sp. C. by order)	
Albert, App., Pritchard, Resp. (Ap. from Justices)	Friday, Nov. 17.
Great Western Railway Co., Apprs., Willis, Resp. (Ap. from County Court)	Garrett v. Davis
	Union Marine Insurance Co. v. Martin (Sp. C. by order).

## COURT OF EXCHEQUER.

## NEW TRIALS.

Ryder v. Hads (D.)	Ball v. Nash (D.)
Kershaw v. Oldham (Ap. from County Court)	Gordon & an. v. Vestry of St. James, Westminster (Sp. C. by order)
Smith v. Grandridge (Ap. from County Court)	Johnson v. Barrett (D.)
Lowe v. Howarth (D.)	Poole v. Bradshaw (D.)
Savin v. Hoylake Railway Co. (D.)	Chapman v. Hardy (D.)
Stanger & an. v. Miller (D.)	Lucas v. Newman (D.)

Days appointed for Errors and Appeals after Michaelmas Term, 1885.

## QUEEN'S BENCH.

Monday ..... Nov. 27 | Tuesday ..... Nov. 28

## COMMON PLEAS.

Monday ..... Nov. 29.

## EXCHEQUER.

Thursday ..... Nov. 30 | Friday ..... Dec. 1

THE LATE MR. JUSTICE CROMPTON.—For several reasons, it would be almost a matter of regret if the name of the deceased judge were to be allowed to pass away without any further notice of his character and career. It was a name not unknown in the law, and it is a curious thing how certain well-known

names have from the most ancient times reappeared in our legal history. One may meet, for instance, the names of Erle, Wilde, Martin, and Willes again and again in our law reports, even back to the age of the Year-Books. The name of Crompton, perhaps, does not go back so far as that, but it became associated with legal learning at least as long ago as the middle of the last century—that is, a hundred years ago—by means of "Crompton's Practice"—a book of profound legal erudition, the basis of all subsequent works on the subject; and written, we believe, by an ancestor of the deceased judge. The judge himself had been known in Westminster Hall for forty years. More than thirty years ago he had already distinguished himself by a series of law reports, in which he was associated with the late Sir John Jervis and the late learned Mr. Roscoe. He soon, however, got into such large practice as a pleader and consulting counsel that he had to give up reporting. He was not only a learned lawyer, but a man of sound sense and judgment, and his professional assistance and advice were always highly valued. He had not those more showy qualities which fit a man for forensic triumphs, and so he never had a silk gown. But although he was never Queen's counsel, he was constantly engaged as counsel for the Crown; and for a long course of years his legal reputation was equal to that of any man at the bar. He belonged to the same class of practitioners as Wightman, Cowling, and Williams, men remarkable for legal knowledge and for sound judgment, rather than for brilliant abilities. They had abilities, but such as rather suited them for counsel than for advocacy; and, in short, were more judicial than forensic. For this very reason they were deemed fit men to be made judges; and so many of them, and among these Mr. Crompton, were elevated to the bench by Chancellors who had the sense to see and to value their high judicial qualities. It is to the credit of the present Lord Chancellor that so many of the judges of his appointment (indeed, we believe, with scarcely an exception, all of them), have been of this class. And so it was with the Chancellor who appointed the subject of this notice. Mr. Justice Crompton was appointed to the Queen's Bench some fifteen years ago, and sat there, we believe, some time with Lord Denman, and during the whole time Lord Campbell was Lord Chief Justice, and since then under the presidency of Sir A. Cockburn. His colleagues comprised some of the best judges we have ever had—Erle, Wightman, Coleridge, Blackburn, and Hill—all men of eminence, ability, and of great learning and experience, and it is of itself sufficient proof of Mr. Justice Crompton's judicial ability, that by all of them he was most highly respected, and that among such eminent judges his judicial authority was very highly regarded. After Sir A. Cockburn's elevation to the office of Lord Chief Justice, the deceased judge for some time previous to his death filled the important position of senior *puisne* judge, and in that position he was looked up to both by his colleagues and the Bar as a main pillar of the court. The chief and his colleagues always paid the greatest respect to his opinion, and his judgments were some of the best that were delivered. "They were singularly full of *matter* and of *meaning*; and were almost always delivered off-hand, for the deceased judge rarely wrote out his judgments; and there were none which had more *matter* in them." He was comparatively careless as to style and form of expression, but he was terse, idiomatic, and vigorous in his language, and often very happy in his illustrations. He was in his character eminently *real* and *genuine*; and as, in his own nature he was utterly free from all affectation, formality, and conventionality, and was thoroughly natural and sensible, so he was an enemy



to all self display or unreality in others, and was apt to be a little curt and caustic to those who shared anything of it; and he could be at times crabbed in his manner and severely sarcastic in his tone. But even when he was crabbed there was a dash of quaint humour which made it more amusing than annoying; and the Bar were so well aware of the sound qualities of the *judge*, and the genuine and genial qualities of the *man*, that these little traits did not at all detract from the general respect and regard which they entertained for him. He was a lawyer of the old school; a little tenacious of forms, and a little averse to innovations, even although proposed as improvements; and he would at times indulge in some amusing sarcasms on modern changes in our system of justice; but he had so much sound sense and such good practical judgment, and such thorough mastery of legal principles, that he hardly ever was wrong in the result; and probably there are few judges whose rulings were less often reversed. He was, however, so cautious, that he would never rule anything if he could avoid it, and was a little adroit in evading the necessity of doing so. When, however, compelled to consider and decide, there was no judge more likely to be right. His distinguishing qualities were a certain union of shrewd good sense with dry humour and genial feeling. These qualities, especially the latter, made him warmly beloved by all who knew him; and as of course all the judges and most of the leading men at the Bar were personally acquainted with him, his death was more deeply regretted, and his loss more deeply deplored in the Profession than in any other instance that has occurred for a long period. Hence the unusual honour paid to his memory by the judges attending his funeral, and adjourning their Courts for the purpose—an honour, we believe, without precedent within living memory. Perhaps the best tribute that could be paid to his memory would be conveyed in those familiar and affectionate words in which his brother judges were in the habit of speaking of him, and which most significantly expressed the affection and esteem they felt for him: "Dear old Charley Crompton." Men do not thus speak of others whom they do not dearly love; and the love of a body of men, such as our judges happily are, is of itself the highest eulogy, and the most precious tribute to his memory.

W. F. F.

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## THE JURIST.

LONDON, NOVEMBER 18, 1865.

## THE NEW SCHEME OF LAW REPORTING.

OUR readers are well aware, that we have never been blind to the scope for improvement in our law reports. Nearly twenty years ago, for instance, we expressed our opinion on the subject as follows:—

“No doubt the law reports of the present time are, with few creditable exceptions, not what such reports should be. Some are a mere statement of the nature of the case, too widely set out to shew the points of it; followed by the names of the counsel, a list of the cases, and the judgment verbatim. Others are a recapitulation of the pleadings and of the arguments at great length, and a statement of the judgments with great shortness. Others are a little more altogether than marginal notes should be. No one can read the reports, and not see that there is much to reform in the whole system. But the question is, on whom lies the burthen of the duty?”

That was written in 1848, and next year the Bar conceived it was their duty to attempt a reform, and a committee of the Society for promoting the Amendment of the Law was appointed to consider of it; but nothing practical came of it. Three or four years afterwards, Messrs. Spottiswoode, the eminent printers, established a set of “Common Law and Equity Reports” in all the courts, which was kept up for three years with all the resources of their energy, enterprise, and experience, but which succumbed at last, apparently because the reports were not so much better than the others as to induce the profession to break their sets of reports by taking in new ones. Then the matter went to rest until, about two years ago, the Bar again bestirred themselves, and again appointed a committee, which resulted in a “Scheme of Law Reporting,” the essence of which was, that there should be one standard set of reports, not excluding, indeed, but recognising the necessity for a weekly publication of reports for more speedy information of the profession as to points decided in the courts. On that account, and also because of our position as a legal journal, and a medium for legal discussion, it was not likely that “The Jurist” would be materially affected by the success of the new “scheme;” and, therefore, we were in a position to regard and consider it with perfect impartiality. Indeed, one of the main promoters of the new “scheme,” Mr. Osborne Morgan, was one of the editors of the “New Reports,” a weekly publication, conducted with some ability, but which has just fallen, simply because it was not wanted; which shews that the promoters of the new scheme did not consider that it would at all interfere with a weekly publication like ours; and also shews, that another such publication was not required. We are anxious to point out this, because it shews that we have no sort of interest adverse to the new scheme. But its very essence was the establishment of one standard set of reports for permanent use and reference. Indeed, so much so, that some of the most

energetic of the original promoters of the movement stipulated for the privilege of exclusive citation, and when it was found impracticable to obtain it, at once withdrew.

It is strange that any members of the profession should have supposed that such a privilege could be secured to any set of reports. Nothing short of an act of Parliament could have secured it, and our readers may judge of the probability in our day of a revival of the old system of monopoly. Mr. Justice Montague Smith, who proposed the system of official reports, never suggested any such exclusive privilege of citation. Still it was of the essence of the scheme that there should be one set of standard reports, inasmuch that this was made one of the main grounds of *opposition* to it on the part of some eminent members of the profession, who objected to it because, if successful, it would abolish competition, secure a virtual monopoly, and confer upon “the council” an arbitrary and dangerous power of suppression of reports. The exercise of some such power, beyond a doubt, formed one most material feature of the scheme, as clause 5 expressly provided that the cases should be carefully selected. If this meant no more than that cases not useful as precedents should be rejected, it meant nothing, for it meant no more than what every law reporter worthy of the name, or every editor of law reports, takes care to carry out. But read by the light of the ideas and objects avowed by leading promoters of the scheme, it is to be inferred that it meant more than this, and implied a power of suppression on other and more questionable grounds; and it was urged with great force, that if the object could be attained by establishing one set of standard reports under the control of a “council,” having such a power of “selection” or suppression, it would be most dangerous and mischievous. We are bound, however, in candour, to admit that there is not the least chance of such a danger arising; for even if the scheme had succeeded, we have already shewn that it would not interfere with a publication like “The Jurist;” and thus the healthy element of free competition could be continued in the system. The scheme, however, did not succeed, and broke down in its name and original object; for the only mode in which it could be attained was by the getting the whole body of the profession to take in the new reports, which, of course, *ipso facto*, would have put them in the desired position. This failed, when, after the lapse of a year, it was announced, about this time last year, that only a few hundreds of subscribers had been obtained. It was then vigorously contended, even by some of the most prominent of the original promoters, that the scheme had failed, and that the only effect of going on would be to introduce one more commercial speculation into the field, and thus to enhance and aggravate the evil alleged as the chief reason for the scheme, viz. the multiplicity of the reports. This alleged evil was to a great extent imaginary, for, after all, there were not more than one or two publications of reports for the same kind of purpose, or the same class of readers, and all of them are more or less different in their plan, purpose, and circulation.

However, the object was to get rid of this evil, and to do so in the only practicable mode, by getting the whole profession to take in the proposed reports. When that design utterly failed, some of the principal promoters of the scheme declared that it had altogether broken down, and that it must necessarily result merely in a new commercial speculation. Accordingly, after the lapse of another year, such has been the result. Unable to obtain anything like the amount of subscriptions which would enable them to start, the council have been compelled, in effect, to resort to private capital and enterprise, and place the scheme in the hands of an eminent printer, who, taking the subscriptions obtained, supplies the deficiency out of his own capital, and starts the reports. It may be a question (as we have already pointed out in a former article), whether the great bulk of the subscriptions were not given on the implied condition, that the required amount was subscribed, and we have learned that some subscribers take that view. But waiving that point, it is manifest, that the scheme as originally propounded has entirely broken down, and that all that has been done is to start a new commercial speculation—whatever its merits may be. In short, the result is only to revive the scheme of Messrs. Spottiswoode, and to substitute for them the name of Mr. Clowes. It is really the self-same scheme: the very name is in substance the same; and so is the plan—the subscription, and, in fact, all the main features of the scheme. There is no greater reason why it should succeed than the former. No doubt, there may be some degree of improvement; but then, whatever it may be, it will be the result of competition, and will probably more or less be distributed and extend to *all* the reports. All of them will be put upon their mettle, so to speak, and the result will be, that all will be improved. The question is, therefore, whether the *degree* of improvement in the new reports will be so much *greater* than in any other as to induce the profession to take them in preference to the others. As to which, it is to be observed, that there is but little new blood in the system, and the reporters are almost all taken from the old reporters of the present reports. So that we see no great reason to suppose that the new reports will be very much better than the present ones. As to that, however, we shall see; only what is to be observed is, that it *remains* to be seen; and that *until* it is seen and shewn, the profession in all probability will suspend their judgment. This is, no doubt, the real reason why the list of subscriptions was so inadequate. Though the promoters appear to ignore the previous scheme, the profession have not forgotten it, and are a little distrustful of new projects which may not succeed.

Hence it is that in some of the most important courts the old reporters have refused, after the greatest pressure, to come in under the new system. We believe that the House of Lords reporter only does so nominally, and that the Privy Council declines to do so. It is well known that Beavan's reports in the Rolls, and the regular reports in the Queen's Bench and Exchequer continue; and it is believed that the

regular reports in the Common Pleas are also to be continued in new hands. As we have already observed, to all this, as far as our own interests are concerned, we are indifferent, and it cannot affect our position. But we are not indifferent to anything which concerns the interests of the profession; and particularly as to the efficiency of its law reports. We wish well to any scheme which may really elevate and improve the system which exists; and if the new scheme has that effect it will have our support. But our own attitude towards it, at present, is that which appears to be that of the profession—one of impartial expectation. We suspend our judgment. We wait to see what is now actually achieved and performed. If a better series of reports than at present exists is produced, it does not necessarily follow that the new scheme will succeed; for it may be that other reports will improve in the same proportion. But if a better series of reports is produced than any other which is published, then, beyond all doubt, the new reports will succeed; that is, provided they are kept up for a sufficient time to test their merits and stability; for the profession have always been a little slow to subscribe to new reports. Time and their own merits will test the new reports, as in the case of any other commercial speculation. But the fact must be fairly faced, that it is a commercial speculation, neither more nor less; and, of course, it has in it all the vices and infirmities, whatever they may be, which attach to a commercial speculation. Some of the most distinguished of the promoters of the movement emphatically declared that the commercial element was incompatible with the existence of a proper system, and that the publication of standard law reports was far too important a matter to be left to commercial speculation. This view has been supported by men as eminent as Mr. Justice Smith, and was enforced by an elaborate article in the "Law Review." If it is valid, then, of course, the new scheme, even if it succeeds commercially, can never satisfy the profession, nor attain its original objects. And on that conviction, some of the main promoters of the movement abandoned it. Upon this point we will not now enter; but we desire to point out, that, on the avowal of some of the principal promoters of the movement, the new scheme is merely a commercial speculation, and should so be considered. If we are rightly informed, it is so considered by the judges, who, at all events where the "regular reports" are not abated, have declined to extend to the new reports any privileges or distinctions beyond those which are accorded to our own, or any others, viz. the privilege of fair citation, according to their merits.

That in this field of fair competition we ourselves have no reason to fear; we could afford abundant proof from the pages of the law reports themselves. Over and over again has it happened (as in instances mentioned in the "Law Review") that the report of a case in "The Jurist" has been cited, and referred to by the Court as more copious or correct than any other. So long as our reports remain as good as they are (and we hope that if they alter it will be for the better), this and the advantage of weekly publication will relieve us from any fears as to the future; and our existence will be a guarantee to the profession that cases likely to be useful will not be suppressed.

That being so, we can afford to look with entire impartiality on the new scheme; for its success cannot affect us, and its failure will either establish the necessity for some other system, or shew that there is no ineradicable evil in our present system, and that all that was wanted was that degree of practical improvement which time, and competition, and professional opinion, are sure in the long run to bring.

### SPECIFIC DESCRIPTION IN RESIDUARY BEQUESTS.

In the learned notes to the Concise Forms of Wills by Messrs. Hayes and Jarman, are some judicious remarks on the distinction between a specific and a pecuniary bequest. "Thus," we are told, "the bequest of a debt, or a sum of money or stock, or a watch, ascertained and distinguished from the mass of the personal estate, as a bequest of 500*l.* now due to me from A., or 500*l.* now in my desk, or 500*l.* Consols now standing in my name, or the watch which I now wear, is a specific legacy; but a bequest of money or value merely, as of 500*l.* sterling, or 500*l.* Consols, or a gold watch, is a pecuniary or general legacy. The specific legatee, who (subject of course to the paramount claims of creditors) can at once fasten upon the particular thing, as being identified and appropriated by the testator himself, is preferred to the pecuniary legatee, who can only claim satisfaction in amount or value out of the personal estate at large." (p. 112 in the 6th edition, 1863, ably edited by Mr. Badger Eastwood). Again: "It is common in residuary clauses in wills to find, in addition to the general words here used, a long enumeration of particulars, of which the personal estate then actually did, or might be supposed to, consist. Of all kinds of verbosity, this seems to be the most inexpedient, if not pernicious; for, if these words are not absolutely nugatory (which they generally are), their effect is to restrict the more comprehensive words by which they are usually succeeded. Such particularity also sometimes gives rise to another question, namely, whether the residuary legatee is not to stand in the favoured position of a specific legatee in regard to the enumerated articles; and such question becomes especially important, when there is a deficiency of assets to pay all the debts and legacies. It ought always to be prevented by an unequivocal expression of intention, where the residuary legatee is to take any of the personal property in the character of a specific legatee, and by framing the residuary bequest in the ordinary, general, and comprehensive language, where he is not." (Id. 373).

The question here suggested by the late Mr. Jarman occasionally arises in practice; but though the advice as to the mode of framing residuary bequests is most judicious, we think there can be no reasonable doubt as to the construction to be put upon the specification of particulars which such bequests very frequently contain. Thus, under a bequest in the following form, "I give my leasehold house in the New-road, and all other my leasehold hereditaments, and all the residue of my goods, chattels, and personal estate, unto A. B.," there can, we conceive, be no doubt that the leasehold house specifically indicated is given as part of the residue, and may be sold by the executor, if the personal estate is defendant, for the payment of pecuniary legacies. Thus, in *Fielding v. Preston* (1 De G. & J. 444), Lord Cranworth, C., said, "Where there is a gift of the residue, and the testator unnecessarily chooses to enumerate some particular things in the residuary gift, it would be dangerous to hold that such a circumstance is sufficient to constitute the

things so enumerated specific gifts. It rarely happens that in the gift of a residue something is not mentioned specifically." In that case a gift by a testator of "all his funded property, and all other his personal estate not thereinbefore bequeathed," was held not to be a specific gift of the funded property. If the rule of construction were different, and everything given by words of specific description in connexion with a general residuary gift were held to be a specific legacy, it would be necessary to apply a strict verbal criticism to all residuary gifts—gifts which are almost always framed in the loosest and most careless manner—with the effect, in almost every case, of exempting the greater part of the testator's estate from the payment of the pecuniary legacies given by his will; so that a gift of all the testator's money and funded property, and all other his personal estate not otherwise disposed of (where the words "not otherwise disposed of" strictly refer to the words immediately antecedent), would carry away the very money and funded property out of which the pecuniary legacies were intended to be paid. A gift of the testator's leasehold house in the New-road, standing alone, is specific; a gift of all his leasehold houses, standing alone, is specific; but if a gift of his real and leasehold and personal estate, or of his freehold house at Croydon, and other real estate, and his leasehold house in the New-road and other leaseholds, and his personal estate, is specific as to the leaseholds, so as to exempt the house specifically indicated and the other leaseholds from contribution to the pecuniary legacies, then a gift of his furniture, stock in the funds, and personal estate is specific as to the furniture and stock, and exempts them from liability to pecuniary legacies, contrary to the authority we have cited, and to the intention, where any intention existed.

But a gift may be residuary for the purpose of the present question, and yet be partially specific for another purpose, as appears by the class of cases to which *Fitzwilliam v. Kelly* (10 Hare, 275) belongs. There the question between a tenant for life of the residuary personal estate and those entitled to the reversion of it, was, whether the tenant for life could claim the enjoyment of the leasehold property in specie, and it was held, that, during the continuance of the life estate, the leaseholds were to be enjoyed specifically. From which case, taken in connexion with the doctrine in *Fielding v. Preston*, it follows that an express direction in a will that the rents of leaseholds mentioned in a residuary gift for life, shall be specifically enjoyed by the legatee for life will not make the gift of the leaseholds specific, as against pecuniary legatees. The converse case of a gift, residuary during a life and specific afterwards, occurred in *Fielding v. Preston*. *Clark v. Butler* (1 Mer. 304), which has been sometimes cited as an authority for exempting articles specifically described from liability as part of the residue with which they are given, was merely a striking instance of the application of the rule that a codicil and a will are to be read together, and reconciled with as little alteration of the will as possible; so that a will giving certain things specifically, and the residue, was held not to be revoked, as to the specified articles, by a codicil which made a different disposition of the residue. (See *Sargent v. Roberts*, 12 Jur. 429).

Mr. John Lenton Pulling, Gent., of 3, Adelaide-place, London Bridge, has been appointed by the Lord Chief Justice of the Queen's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, a London Commissioner to administer oaths at common law.



## GENERAL EXAMINATION OF STUDENTS.

## MICHAELMAS TERM, 1865.

At the General Examination of Students of the Inns of Court, held at Lincoln's Inn Hall, on the 30th and 31st October, and the 1st November, 1865, the Council of Legal Education have awarded to—

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By order of the Council,

(Signed) EDWARD RYAN, Chairman, pro tem.

Council Chamber, Lincoln's-inn,

Nov. 9, 1865.

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## BOOKS RECEIVED.

*Principia Prima Legum; or an Enunciation and Analysis of the Elementary Principles of Law in its several Departments.* By George Harris, Esq., F.S.A., of the Middle Temple, Barrister-at-Law, one of the Registrars of the Court of Bankruptcy, and author of "The Life of Lord Chancellor Hardwicke," "The true Theory of Representation in a State," and "Civilization considered as a Science." Part 1, royal 8vo., pp. 271.—Stevens & Sons.

*Legal Forms, compiled for the use of Attorneys and Solicitors.* By William Champaign Hall, Attorney-at-Law. 12mo., pp. 188.—H. Cox.

*Legal Forms for Common Use; being 200 Precedents, with Introduction and Notes.* By James Walter Smith, Esq., LL.D., of the Inner Temple, Barrister-at-Law. 12mo., pp. 231.—E. Wilson.

*A Guide to the Law, for General Use.* By Edward Reynolds, B.A., Oxon, of the Inner Temple, Barrister-at-Law. Square 8vo., pp. 184.—Stevens & Sons.

*On the Study of English, Roman, Hindu, and Mahomedan Legal Systems, with especial regard to their Salient Points of Agreement and Difference; being a Lecture delivered at King's College, London.* By John Outler, B.A., of Lincoln's-inn, Barrister-at-Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London.—Butterworths.

*Equitable Jurisdiction of the County Courts.—Supplement to Pollock's County Court Practice, containing the Act 28 & 29 Vict. c. 99, Orders, Forms, and Tables of Costs and Fees, with the Trustee Acts, &c.* By Charles Edward Pollock and Henry Nicol, Esqrs., Barristers-at-Law.—H. Sweet.

*The County Courts Equitable Jurisdiction Act, 28 & 29 Vict. c. 29, with the Orders, Rules, Forms, and other Matters relating thereto, and copious Notes and References.* By Henry Mainwaring Sladen, Esq., of Lincoln's-inn, Barrister-at-Law.—Wildy.

*The Law Magazine and Law Review; or Quarterly Journal of Jurisprudence, for November, 1865, being No. 39 of the New Series, and No. 149 of the Law Magazine.* Edited by C. Harry Palmer, M.A., Barrister-at-Law.

## COURT OF QUEEN'S BENCH.

MICHAELMAS TERM, 29 VICTORIAE.—Nov. 15.

This Court will, on Monday, the 27th, and Tuesday, the 28th days of November, instant, hold sittings, and will proceed in disposing of the cases in the New Trials, Special, and Crown Papers, and any other matters then pending, and will also give judgment in cases then standing for judgment.

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The Practical Working and Effect thereof, and the Mode of Procedure under the same for effecting Enfranchisement.

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### CONTENTS.

THE INTRODUCTION contains a short history of the progress of legislation on the subject of Copyhold Enfranchisement, and an explanation of the alterations in copyhold practice consequent on the Copyhold Act of 1841, and how the Copyhold Acts have affected the marketable value of manors and copyholds.

The subject is then discussed in twenty-six chapters, the heads of which are shortly here stated.

Chap. I.—On the powers, generally, of any lord or tenant to compel enfranchisement, and whether of a portion only of the lands of a tenant; and on the right of a tenant holding separate properties to a division of the rent-charge if required by him at the time of enfranchisement.

Chap. II.—As to heriots.

Chap. III.—As to the cases in which tenants may expect to obtain exemption by an appeal to the Copyhold Commissioners, from the compulsory powers of the Acts being put in force; and suggestions for commutation as to fine arbitrary building ground.

Chap. IV.—As to how proceedings ought to be taken by lord or tenant for compelling enfranchisement; and as to the advantage of appointing an attorney under the Copyhold Acts.

Chap. V.—As to the appointment of valuers; notice thereof; and as to who may be appointed as valuer.

Chap. VI.—As to the service of all notices required by the Acts.

Chap. VII.—As to the appointment of a sole valuer at Petty Sessions in cases where the annual value of the property to be enfranchised is under 20*l*.

Chap. VIII.—How the valuers ought to be instructed by the tenant's solicitor and by the steward.

Chap. IX.—As to the identification of copyholds; the great importance of the question of identity; and as to the Copyhold Commissioners' powers not extending to settling out lands in lieu of lands which it is impossible to identify, and the means of having copyhold lands effectually set out in such cases.

Chap. X.—As to the price of enfranchisement, and the principle on which it is calculated; and as to the lord's right in certain cases to object to the exact application of the life-tables.

Chap. XI.—As to the power to agree for enfranchisement in consideration of the conveyance to the lord of a portion of the copyhold land of the tenant.

Chap. XII.—As to the steward's compensation, his rights, and his duties.

Chap. XIII.—As to the costs and expenses attending enfranchisement, and how they are to be borne.

Chap. XIV.—As to the effect and consequences of the reservation of the lord's rights to mines, minerals, &c.

Chap. XV.—How the lord's title ought to be proved; and as to the advantages of completing voluntary enfranchisements under the Copyhold Acts.

Chap. XVI.—As to the deed of enfranchisement or award when the consideration is a gross sum.

Chap. XVII.—As to the award where the consideration is an annual rent-charge redeemable, under the powers of the Copyhold Acts, at a price to be fixed by the Copyhold Commissioners at the time of application to redeem.

Chap. XVIII.—As to how an enfranchisement for a rent-charge should be carried out where lord and tenant desire to fix and determine the price for any future redemption, at the tenant's option, of the rent-charge.

Chap. XIX.—As to customs respecting descent in certain cases affecting land enfranchised under the Acts prior to the Copyhold Act of 1853.

Chap. XX.—As to the remedies for a rent-charge, the tenant's power of redemption, and the consequences, on redemption, of not obtaining a certificate of such redemption from the Copyhold Commissioners.

Chap. XXI.—As to charges for gross sums, and the necessity, on paying off the same, of shewing the dealings with such charges, as in the case of ordinary mortgages.

Chap. XXII.—As to the necessity, in dealing with lands which have been enfranchised, of searching the court-rolls as to previous incumbrances, and the propriety of giving notice on the face of a deed of enfranchisement of any mortgage affecting the land enfranchised at the time of such enfranchisement.

Chap. XXIII.—As to the effect upon the title and security of a mortgage of copyhold land of the enfranchisement being made to the mortgagor, the tenant on the roll; and as to the responsibility incurred by trustees in taking mortgages of enfranchised land subject to prior charges under the Copyhold Acts.

Chap. XXIV.—As to divers general provisions of the Copyhold Acts affecting the tenant, and also the lord's rights and interests.

Chap. XXV.—As to the powers of partition of copyholds given to Courts of Equity under the Copyhold Acts; and as to the effect of enfranchisement of undivided shares of copyhold land on the remaining shares.

Concluding Chapter.—How far the power of the tenant on the roll to demand enfranchisement affects the marketable value of copyholds; and as to the conditions of sale of copyholds which in consequence of the Copyhold Acts are now sometimes desirable; and as to the consideration required in the selection of a trustee of copyholds.

There is an Appendix, in which the Copyhold Acts are set out in extenso, with divers annotations and a copious Index, shewing, amongst other things, the portions of the Copyhold Acts which have been repealed or have become of no effect.

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# The Jurist

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## THE JURIST.

LONDON, NOVEMBER 25, 1865.

## THE CASE OF WINSOR v. THE QUEEN IN ERROR.

THIS case is so far advanced, that, though it cannot come on for argument until next term, it can be seen what will be the course of the argument on each side, and what are the points on the decision of which the result must depend. It was not without some trouble that the record was settled, and its ultimate settlement was not quite satisfactory. That which really took place, it appears (upon affidavit), was, that the jury, after four or five hours' deliberation, late on Saturday night, were sent for by the judge, and asked if they were likely to agree; to which they answered that they were not. Upon this the judge told them, that if locked up then, they would have to remain locked up all night, all Sunday, and all Sunday night—at all events, up to twelve o'clock on that night; and he then asked them if they would prefer to be locked up or to be discharged. One is not surprised to learn that at this there was a laugh, and that they at once said they desired to be discharged. Upon this they were discharged. The entry upon the record was, that the jury unanimously declared that it was impossible that they should agree. When the prisoner's counsel objected to this as by no means accurate, he was told by Mr. Justice Mellor that it could not matter, for that even if the jury had said it was impossible they could agree, they might have agreed in the next minute. This is true enough, and it immensely helps the argument for the prisoner, for it may be that they were about to agree to a verdict in her favour when interrupted by the judge. But the prisoner's counsel might have replied, that if it did not matter, why did the judge so state it? And if it was material to be stated at all, it was material to be stated correctly. However, the whole argument in favour of the prisoner upon the primary point, as to the discharge of the jury, is put in a nutshell in those words of Mr. Justice Mellor, that the jury "might have agreed to a verdict the next moment," or in the next half hour. However, the record, as it has been finally settled, states, that, on the first trial, both prisoners (Winsor and Harris) having been arraigned, and pleaded, their trial proceeded, until, at the close of the case, they were given in charge to the jury, and they retired to consider their verdict; that a few minutes before twelve o'clock on Saturday night they stated that they were wholly unable to agree; and that then the justices, "the next day being the Lord's-day, and it being necessary that on Monday they should proceed to open the commission in Cornwall, adjudged that it was necessary to, and did accordingly, discharge the jury."

It is too late now to consider how far this record is correct or consistent with the facts. The Court, when applied to upon an affidavit to amend it, said that they had no power to do so, and referred the parties to the learned judge, who declined to do so in any ma-

terial respect. It is more material to deduce, from the points on which each side strove to amend the record, what will be the main arguments relied on. The prisoner's counsel chiefly objected to the statement, that the jury stated it was *impossible* that they should agree; and to the statement, that it was *necessary* that the justices (i. e. both of them) should proceed on Monday into Cornwall to open the commission there. On the other hand, the Crown counsel succeeded in introducing the statement, that the justices adjudged it to be necessary that the jury should be discharged. There will, it is obvious, be two main grounds of error assigned (or rather there have been, for the assignment of errors was to take place yesterday—Friday), viz. that the jury were unlawfully discharged, and that the trial was unlawfully postponed. Upon the first point it is pretty plain, from the way in which the record is drawn up, what are the grounds on which the Crown counsel intend to rely. It will be contended that, even assuming that as a general rule a jury cannot be discharged without necessity, it is for the judge to decide, according to his discretion, what is a case of necessity. Hence it is that they induced the judge to put upon the record the statement, that he adjudged that it was necessary to discharge the jury. If it is intended to insist that the necessity is a mere matter of discretion and practice, the Court, to affirm that, will have to overrule the case of *Conway v. Reg.* (7 Ir. Law Rep.), where it was held that it is necessary that the grounds of the necessity should appear on the record. For if it is matter of discretion and practice, not only it is not necessary that it should be on the record, but it is not legal or regular that it should be so, since mere matter of practice and discretion cannot be reviewed by a court of error.

If it is matter of practice, therefore, it is plain that the Crown must have judgment upon this writ of error. But, on the other hand, it cannot be matter of practice, unless the practice might vary on different assizes—that is, unless, on the assizes for one county, the practice might be in such cases to discharge the jury, and try the prisoner over again; and in another county, *not* to discharge the jury; or to discharge both the jury and the prisoner. This of itself seems like a *reductio ad absurdum*; and yet it is a strictly logical consequence of the view, that the matter is one of mere practice or discretion. For it has been laid down by a court of error, that the practice of a court is entirely under its own control, and that this is so of all matters of mere discretion. (*Richardson v. Mellish*, 9 Bing. 125). Hence, of necessity, it must vary in different courts; and it has lately been held that the courts of assize are separate superior courts. (*Reg. v. Charlesworth*, 1 B. & S. 460). The very distinction between matter of practice and matter of record and of error is, that the latter is, in the course and order of the common law, a custom of the *realm*, binding on all the courts; whereas the former is only the "custom of the court," and varies in different courts. In the language of pleading, in short, practice is the custom of the court; the course of the common law is the custom of the realm. If the dis-

charge of a jury, after the case is closed, and they have final charge of the prisoner, is mere matter of discretion, then it is mere matter of practice; it might vary in different assizes; if it could not so vary, it must be because it touches the course of the common law, which any statute could alter. And the very fact that the judges of assize in this case have put on the record certain supposed grounds of necessity, shews that they could not venture to treat it as a mere matter of discretion and practice; for otherwise the mere statement, that they had adjudged a necessity, would have sufficed. Instead of this, certain grounds of necessity are carefully set forth. One is, that it was within a few minutes of Sunday. Another is, that the jury said they were not able to agree. As to the first point, it may be surmised that the counsel for the Crown intend to shape their case thus:—That Sunday is dies non juridicus, and a day on which no judicial act could be done. That the taking of a verdict, or the discharge of a jury, would be judicial acts, which could not be done on a Sunday. That the taking of a verdict is an act which, in a capital case of felony, where there cannot be a privy (i. e. a secret) verdict, must be done in open court, and so, as the Court could not sit on Sunday, could not be done on a Sunday. That, therefore, if the jury were locked up, then they would have to remain locked up all Sunday, and that as in that time there was a great probability that some of them would become ill, there was a case of impending immediate necessity, which would justify the discharge of the jury. To sustain the argument for the Crown on this point, it must, of course, be contended, not merely that Sunday is not a day on which courts of assize ordinarily sit, but that it is not competent to them, in point of law, so to sit; and that any judicial act done on that day is void. Now, even if this applies to any acts judicial, in the proper sense of the term, does it apply to acts rather ministerial, and such as could be done by the officer, as the reception of a verdict? Is a verdict void if received on a Sunday? Is it law, that if in this case the jury, at a minute after twelve o'clock on Saturday night, had returned a verdict of not guilty, it could not have been received and recorded, even although the Court remained sitting, and yet that the jury could not be discharged, but must have been kept locked up all Sunday, and discharged on Monday, and the prisoner afterwards tried again? And so of a verdict of guilty. But if the case had not closed on Saturday night, it is clear that the jury must (as in *Palmer's case*) have been locked up, or, at all events, kept closely together all Sunday. And in this very case it appears, that the learned judge at the trial did not consider that he *could* not have locked up the jury, but that he *ought* not to do so. But is not the Court, in contemplation of law, to be deemed to be sitting all the while the jury are locked up? And if so, then what becomes of the view that a court of gaol delivery cannot sit on a Sunday? For if the jury may be locked up on Sunday (which is admitted), and the Court, in point of law, is sitting while they are locked up, then the Court may sit on Sunday. And if, as appears not to have been doubted, the learned judge

could have had the jury locked up on Sunday, is it to be seriously contended that the verdict could not have been received and recorded on a Sunday? The reception and record of a verdict is not, in the ordinary and proper sense of the term, a judicial act; for it may be done by the officer in the absence of the judge. (*Bentley v. Fleming*, 1 C. B. 1).

It undoubtedly is true, that ordinarily the Courts do not sit upon Sunday; and in 3 Shep. Ab. 181, it is laid down, that if any part of the proceedings in a suit of law be entered and recorded to be done on Sunday, it makes the whole void. And it has been held, that if an original writ bore date on Sunday, even the appearance of the party would not help it. (Vin. Ab., tit. "Sunday," (C.)). And it has been held in our own time, that a writ of summons dated on a Sunday is irregular. (*Hanson v. Sharpleton*, 4 Dowl. 48). But, then, that was apparently on the ground, that as the offices of the court were not open on a Sunday, it was impossible that the writ *could* have been issued on a Sunday; and that, therefore, it was in contravention of the statute, which expressly requires that the writ should bear date on the day it is issued.

In a recent case (*Rowberry v. Morgan*, 9 Exch. 730), where it was held that Sunday was to be reckoned in the computation of the number of days to be allowed to a defendant before the plaintiff could sign judgment, and issue execution, Mr. Justice Willes, then at the bar, thus cited the authorities on the subject:—"Sunday cannot be treated as a dies non juridicus, except it be made so by express enactment. (Com. Dig., 'Tempe.') In ancient times, this Court sat on Sunday. (2 Mad. Hist. of the Exch. 5). Formerly, where bail had eight days to render a defendant, Sunday, although the last of such days, was taken into account. (1 Tidd's Prac. 284). And in the case of the duration of term, which was provided for by the 11 Geo. 4 & 1 Will. 4, c. 70, s. 6, the event of the last day of term falling upon Sunday was expressly provided for by the 1 Will. 4, c. 3, s. 3."

Now, although it is quite true, that in a case of felony there cannot be what is called a "privy verdict"—that is, a verdict taken in secret—at the judge's lodgings, but must be in court, it may well be, that the Court may sit for the ministerial purpose of receiving the verdict, and discharging the jury, postponing the record of it until Monday. So much, however, may suffice for the first of the two main grounds of error, the discharging of the jury. As to the other, the postponement, or rather discontinuance, of the trial, it is observable, that there is no statement on the record, that the justices adjudged it to be necessary; but in order to shew that it was so, it is stated, that it was necessary that they should proceed upon the Monday into Cornwall to open the commission for that county. This was objected to by the prisoner's counsel, and with great reason; for if it was a conclusion of law, it was, even if correct, unnecessary, but in reality unfounded; if a conclusion of fact, it was equally incorrect.

Every one knows, that neither in fact nor in law is it necessary that both the judges, nor indeed that

either of them, should go to the next county to open the commission. We all know, that, on the contrary, it is constantly done by one of the Queen's counsel on the commission. Nor would it be necessary that both of the judges should go into the next county at all; for it constantly happens that one of them does not go; and it so happened with this very judge, Baron Channell, when he sat a whole week at Chelmsford, after his brother judge had left.

In no sense, then, was it necessary that both judges should leave the place before the prisoners were all tried, and it is, at least, doubtful whether it was lawful to do so, the Queen's commission being to deliver the gaols, i. e. to try all the prisoners. The due discharge of the commission required that the prisoners should all be tried, and that above all, a trial once commenced would be concluded. Even assuming that the jury were rightly discharged, there was no reason, at least none stated on the record, for not proceeding with the trial on the Monday morning, or as soon as convenient; and even if it were necessary that the judge should leave, he could have returned when the Cornwall assizes were concluded. We have reason to believe that there is a general impression, that on this point, at all events, the writ of error is well founded, and that there was no sufficient reason for putting off the conclusion of the trial. It is, certainly, the most serious point of the two, for it gave the prosecution a large interval to get up a new case against the prisoner, and, in substance, gave a new trial in a capital case. The result was, that without any previous notice, one of the fellow-prisoners was called against the other. This, indeed, may be found to raise a third ground of error; the accomplice not having been acquitted, and being still a party to the record. There is a well-known rule of law which excludes evidence of the statement of one of two prisoners as against the other, unless coming within the general rule, which allows evidence of any statement made in the presence of a prisoner. The principle of that exception, however, will not apply to admit the evidence of one prisoner against the other. For the reason why any statement made before trial, in the presence of a prisoner, is admissible against that prisoner, is, that being made in his presence at a time when he may be expected to deny it if untrue—he did not deny it; and so, by implication, admitted it. But when a prisoner is on his trial, no implication of that sort is admissible; for he is not expected to say anything as to what is testified against him; and in law, his statement would not be evidence against him, as it is, when made before trial.

And, on the other hand, the evidence of a fellow-prisoner upon her trial—therefore neither acquitted nor convicted—is open to the most obvious exception on the ground of interest, and there is no statute which admits the evidence of parties to the record in criminal cases. On the contrary, the statutes on the subject (see the 14 & 15 Vict. c. 100) expressly except criminal cases. Unless, therefore, the evidence of parties to the record is admissible at common law against fellow-prisoners—as it appears upon the record that Harris, the fellow-prisoner, was examined against Winsor without being acquitted, and while both remained parties to the record—upon this ground alone, if not upon the others, the judgment may probably be reversed. We never yet heard of such a thing as calling one prisoner, while yet upon his trial, against another prisoner in a case of felony; and if it be indeed admissible, it will work a startling alteration in our criminal procedure. In a civil case, before the statute making parties to the record witnesses, it is well known that a defendant would not be admitted as a

witness before *acquittal*, and a verdict of acquittal was always taken before the evidence was received. The principle was, of course, that the interest would be so great as to render the evidence untrustworthy. That objection has been got rid of in civil cases, but only a statute could get rid of it; and it remains unaltered in criminal cases, which are expressly excepted from the operation of the statute. The reason of the objection is a hundred thousand times stronger, of course, in a criminal case, and, above all, in a capital case. The temptation is terrible, while the rope is over the head of a criminal, to throw the guilt upon another. In this instance, the case against Winsor was mainly based upon the evidence of Harris, who saved herself by convicting her fellow-prisoner. Had she been *acquitted* she would have had no interest. As it is, upon legal principles, probable that her evidence may have been a tissue of perjuries, this probability is the reason why the evidence of forgers is not admissible. The law deems the temptations to perjury so irresistible as to render the evidence worthless. But if worthless for exculpation, it is obviously worse than worthless for inculpation. If unsafe to acquit, it is surely perilous to convict upon such evidence. This, perhaps, may turn out to be the real and substantial ground of error, though it is, as we have seen, closely connected with the other, as the putting off of the trial.

#### THE COUNCIL OF LAW REPORTING.

In some remarks on the proceedings of the council, which appeared in our number for the 11th November, we urged that they could not allege the terms of the bar scheme as an excuse for their refusal to make the very reasonable concession required by the authorised reporters in the Queen's Bench and Exchequer, while they were actually deviating from the scheme in much more important particulars. They have now issued a defence, which is equally uncandid and insufficient. It runs thus:—

"The council did not obtain the names of 2000 subscribers, or a subscription of 10,500*l.*, by the 15th day of June last, as contemplated by Sir Fitzroy Kelly's preliminary address, issued to the profession, and dated the 11th day of March, 1865. The opposition of existing interests, having two, at least, of the weekly legal periodicals at their command, sufficiently accounted for the fact. Instead, however, of proposing an increased subscription, as authorised by the 22nd clause of the bar scheme, the council, at the urgent request of several subscribers and leading members of the profession, resolved to act upon the 27th clause of the scheme, which sanctioned a contract 'with one or more publishers or printers, who should undertake all the trouble and risk of the publication, sale, and distribution of the reports, receive the subscriptions, pay all expenses, and account to the council quarterly,' if any publisher or printer would come forward with an offer for that purpose.

"The council, as representing the profession in a matter of public concern, were anxious to receive, and hoped that they might have received, some offer from the London law publishers. They, however, decided for themselves, that their interests required them to oppose rather than assist the council, and that (using their own words, in an address recently issued by them, and extensively circulated, and now published in 'The Jurist' of the 11th November instant), 'as prudent men of business, they could not be expected to adopt or encourage an enterprise which seemed to be deficient in the elements of financial success.' The council very much regretted, and still very much re-



gret, this decision; but they had no power to influence or change it.

"In July last, the council received a proposal from Messrs. W. Clowes & Sons, of Stamford-street, printers, offering to undertake, for the period of three years, from the 1st November instant, the publication, sale, and distribution of the reports, for a commission of moderate amount, and further offering (provided the council were in a position, out of the subscriptions, to pay the commission and the first moiety of the salaries of the editors and reporters, which, by the bar scheme, was proposed to be guaranteed) to take upon themselves the entire risk of the subscriptions being sufficient, over and above such commission and first moiety of salaries, to pay the charges for paper and printing, such charges being fixed beforehand at agreed prices. This proposal was carefully considered, and the council, having received from the profession offers of subscription to an amount exceeding the sums required for such commission and the first moiety of the salaries, the proposal was ultimately accepted.

"As a further security to the editors and reporters, a private guarantee fund, amounting now to upwards of 2000*l.* per annum, for the same period of three years, has been raised by members of the profession, in which the Lord Chancellor, Lord Justice Turner, Vice-Chancellor Kindersley, Vice-Chancellor Wood, the Attorney-General, and many of the leading members of the bar, have concurred. These financial arrangements have given entire satisfaction to all parties directly interested, and are, beyond all cavil, within the authority given to the council by the 27th and 28th clauses of the scheme."

After stating that the greater part of the authorised reporters have joined them, and that the arrangements with Mr. Moore are still pending, the address proceeds:—

"With reference to the remaining three of the fourteen sets of authorised reports, namely, those of Mr. Beavan at the Rolls, Messrs. Best and Smith in the Queen's Bench, and Messrs. Hurlstone and Coltman in the Exchequer, these gentlemen have declined to accept appointments under the council, though strongly solicited to do so, and prefer to continue their reports as separate publications. The council have, therefore, appointed other gentlemen reporters in those several courts."

Now, the point of the difficulty with Messrs. Best and Smith, and Hurlstone and Coltman, was, that those gentlemen declined to surrender their independent position for one dependent on the caprice of a council, which already appears to be capable of acting unfairly, while the council insisted that they had no authority to deviate one tittle from the letter of the scheme of the bar committee. We shewed, that in launching the reports with an insufficient subscription list, the council were departing far more widely from the terms of their authority. Their answer is, that on the failure of the subscription, "instead of proposing an increased subscription, as authorised by the 22nd clause of the bar scheme, they resolved to act upon the 27th clause of the scheme,"—as if the 22nd and the 27th clauses were alternative. The 22nd clause is imperative,—that if the subscriptions, inclusive of any advance that may be obtained from Government, fall short of 10,000*l.*, an increased subscription shall be proposed. And the 27th clause is equally imperative,—that if the first moiety of the salaries is not advanced by Government, it shall be made part of the contract with the publishers of the reports that they shall make the advance, *and be reimbursed out of the proceeds of the sale in priority to all other claims*, according to the provisions of the 28th clause respecting the application of the proceeds of sales; whereas

advances by the Government were to be postponed to the expenses of publication and sale, and to the secretary's salary and council expenses; and the Government were to be looked to as customers, taking a considerable number of copies. "These financial arrangements are, beyond all cavil, within the authority given to the council by the 27th and 28th clauses of the scheme." To assert that, "beyond all cavil," the council have not infringed clauses 27 and 28, is no answer to the charge that they are acting in defiance of clauses 21 and 22—which, after all, is no charge at all, but only a refutation of the excuse uncandidly put forward for their unfair and impolitic behaviour to the outstanding reporters. If they were acting fairly and wisely in the spirit of the scheme, no one would insist on the observance of the letter. The council, so religiously observant of the text where it gives them arbitrary power, are yet prepared to apply the subscriptions and guarantees towards supporting a speculation for publishing acts of Parliament, of which the bar scheme makes no mention.

With respect to the complaint of the booksellers, the defence of the council is not merely uncandid, it is positively untrue:—"The council, as representing the profession in a matter of public concern, were anxious to receive, and hoped that they might have received, some offer from the London law publishers. They, however, decided for themselves, that their interests required them to oppose rather than to assist the council, and that (using their own words, in an address recently issued by them, and extensively circulated, and now published in the 'The Jurist' of the 11th November instant), 'as prudent men of business, they could not be expected to adopt or encourage an enterprise which seemed to be deficient in the elements of financial success.' The council very much regretted, and still very much regret, this decision; but they had no power to influence or change it." On reference to the booksellers' address, it will be seen that the words quoted from it by the council refer to a transaction completed before the council existed—before even the outline was sketched of the scheme to which it owes its being—an application by the bar committee, during their preliminary inquiries, for a return by the publishers of their profit and loss accounts in relation to the authorised reports, the Jurist, &c. Perhaps, the bar committee, being appointed to inquire, could not do otherwise than ask for that information; but assuredly they never expected, or were entitled to expect, that it would be given to them. If before July last, when the contract was concluded with Messrs. Clowes, the council expected to receive "some offer" from the law publishers, they had strange notions of business. Under any circumstances the offer must have come from the council. The publishers were to throw overboard the reports, authorised and unauthorised, in the printing, publishing, and selling of which they were interested, either as proprietors or as agents or tradesmen. If it was incumbent on them to volunteer to do this, as the council suggest, at least they could not stir until the 10,000*l.* was subscribed, and the council were authorised to act. According to the terms of the bar scheme, by which the council profess to be bound, the time has not yet arrived at which the publishers could properly make an offer. But the council took very good care that no offer should ever be made, by proposing, through one of their members, terms, which were indirectly obviously inadmissible, and were entirely different from those given immediately afterwards, and long before the result of the proposals for subscriptions could be ascertained, to Messrs. Clowes. It is for the council to explain the cause of their hostility to the law publishers, who certainly never set

themselves in opposition to the bar scheme, nor to the council, until they were at once affronted and threatened by the improvident contract with Messrs. Clowes. On the contrary, of the four firms who signed the address to the council, two were the absolute proprietors of "The Jurist," which warmly advocated the object of the bar scheme, and was ever open, and was the only weekly legal periodical open, as a medium of communication between the council and the profession—the other weekly law periodicals refusing even to admit their advertisements on payment. The proprietors of "The Jurist" had the power to silence that advocate, and to close that convenient avenue. But they felt that the question was one which concerned the interests of the profession, and, little expecting that those interests would be committed to such incompetent hands, they were prepared to withdraw "The Jurist" from the field without seeking compensation, as soon as the bar scheme came into operation. Of the other two firms, one has been neutral, and the other owns the "Law Magazine," from which also the bar scheme and the council have received material support.

The profession have been congratulated on the extinction of the "New Reports," as a consequence of the council's operations. We believe that the suggested cause was not guilty of the small effect. The series was well known to be moribund, and the feeble attack on "The Jurist" was regarded as its dying kick. But, the "New Reports" being dead, the council promise a substitute, in the form of a weekly series, at 2l. per annum. They were called into existence in order to take the best means for suppressing the nuisance of six competing series of reports, and the result is, that we are still to have six series, competing more vigorously than ever, and a seventh series of common-law reports! The council's weekly set of reports are "not intended for citation as authority." Alas! the privilege of non-citation is as unattainable as that of exclusive citation; the judges declare that they cannot refuse to listen to any report that appears to have been prepared by a barrister.

### Correspondence.

#### THE NEW SCHEME OF LAW REPORTING.

TO THE EDITOR OF "THE JURIST."

Sir,—An impression prevails that the new scheme of law reporting has received the approval of the judges of the superior courts of *common law*; and the council have within the last few days published a circular, without date, containing a statement that the judges of the Courts of Queen's Bench and Exchequer "have not expressed any formal approval of the appointments made by the council, but at the same time have not intimated any disapproval or objection to them; and the council feel themselves justified in assuming that the appointments are free from all possible objection."

This statement is scarcely candid; and it is important that the profession should be made acquainted with the truth.

The address of the council to the Lord Chancellor and Judges concludes as follows:—"The council, by this address, respectfully and earnestly request the sanction and support of the judges, for the following purposes:—

"1st. That the judges will approve of the appointment of the several gentlemen named as reporters to the several courts for which they have been selected.

"2ndly. That the judges will be pleased to permit the editors and reporters to have access to, and the use of, their written judgments, and all such papers as

the judges can control; and will also, so far as convenient and agreeable to the judges themselves, revise their unwritten judgments before publication.

"And 3rdly, that the judges will recognise the editors and reporters as members of the bar exercising a professional privilege for a public object, under responsibility, through the council, to the judges, the bar, and the profession at large." (See *The Jurist*, Nov. 11, p. 440).

In answer to this request, the Court of Queen's Bench, in the plainest terms, declare their determination not to interfere, directly or indirectly, in the matter, or withdraw from Messrs. Best and Smith the privilege they have hitherto enjoyed as the authorised reporters of the court; and a precisely similar course has been adopted by the Court of Exchequer, with respect to my colleague, Mr. Coltman, and myself.

In the circular to which I have alluded, the council give a list of authorised reporters whose reports will cease to exist, as separate publications, from the commencement of the present Michaelmas Term. Amongst these are the *Common Bench Reports*, by Scott. This might lead the profession to suppose that the long-established series of authorised reports in that court had ceased. Such, however, is not the fact; and that series will, with the approbation of the Court, be continued by Messrs. O. B. C. Harrison and H. Rutherford, the first part of whose reports will appear early in the ensuing year.

I remain your obedient servant,

E. T. HURLSTONE.

5, Crown-office-row, Temple,  
Nov. 23, 1865.

### Court Papers.

#### EQUITY SITTINGS, AFTER MICHAELMAS TERM, 1865.

*Before the LORD CHANCELLOR.*

*At Lincoln's Inn.*

Monday ....	Dec. 4	{ First Seal.—Appeal Motions and Appeals.
Tuesday .....	5	{ Appeals.
Wednesday ....	6	{ Petitions, Appeals in Bankruptcy, and Appeals.
Thursday .....	7	{ Appeals.
Friday .....	8	
Saturday .....	9	
Monday .....	11	
Tuesday .....	12	{ Appeals in Bankruptcy and Appeals.
Wednesday ....	13	
Thursday .....	14	{ Second Seal.—Appeal Motions and Appeals.
Friday .....	15	{ Appeals.
Saturday .....	16	
Monday .....	18	
Tuesday .....	19	
Wednesday ....	20	{ Appeals in Bankruptcy and Appeals.
Thursday .....	21	{ Third Seal.—Appeal Motions and Appeals.
Friday .....	22	{ Appeals.
Saturday .....	23	{ Petitions and Appeals.

*Before the LORDS JUSTICES.*

*At Lincoln's Inn.*

Monday ....	Dec. 4	{ First Seal.—Appeal Motions and Appeals.
Tuesday .....	5	{ Appeals.
Wednesday .....	6	
Thursday .....	7	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Friday .....	8	

Saturday .....	9	} Appeals.
Monday .....	11	
Tuesday .....	12	
Wednesday .....	13	} Second Seal.—Appeal Motions and Appeals.
Thursday .....	14	
Friday .....	15	
Saturday .....	16	} Appeals.
Monday .....	18	
Tuesday .....	19	
Wednesday .....	20	} Third Seal.—Appeal Motions and Appeals.
Thursday .....	21	
Friday .....	22	
Saturday .....	23	} Petitions in Lunacy, Appeal Petitions, and Appeals.

*Notice.*—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.*

*At Chancery-lane.*

Monday .... Dec. 4	} First Seal.—Motions and General Paper.
Tuesday .....	
Wednesday .... 6	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 13	
Thursday .....	} Second Seal.—Motions and General Paper.
Friday .....	
Saturday .....	
Monday .....	} General Paper.
Tuesday .....	
Wednesday .... 20	
Thursday .....	} Third Seal.—Motions and General Paper.
Friday .....	
Saturday .....	
Monday .....	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 23	

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.*

*At Lincoln's Inn.*

Monday .... Dec. 4	} First Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 6	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Petitions, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 13	
Thursday .....	} Second Seal.—Motions, Adjourned Summonses, and General Paper.
Friday .....	
Saturday .....	
Monday .....	} General Paper.
Tuesday .....	
Wednesday .... 20	
Thursday .....	} Third Seal.—Motions and General Paper.
Friday .....	
Saturday .....	
Monday .....	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 23	

Monday.....	18	} General Paper.
Tuesday.....	19	
Wednesday ...	20	
Thursday .....	21	} Third Seal. — Motions, Adjourned Summonses, and General Paper. Petitions, Adjourned Summonses, and General Paper.
Friday .....	22	
Saturday .....	23	
		} Short Causes, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART.*

*At Lincoln's Inn.*

Monday .... Dec. 4	} First Seal.—Motions and Causes.
Tuesday .....	
Wednesday .... 6	
Thursday .....	} Causes.
Friday .....	
Saturday .....	
Monday .....	} Petitions and Causes.
Tuesday .....	
Wednesday .... 13	
Thursday .....	} Short Causes and Causes.
Friday .....	
Saturday .....	
Monday .....	} Causes.
Tuesday .....	
Wednesday .... 20	
Thursday .....	} Second Seal.—Motions and Causes.
Friday .....	
Saturday .....	
Monday .....	} Petitions and Causes.
Tuesday .....	
Wednesday .... 23	
Thursday .....	} Short Causes and Causes.
Friday .....	
Saturday .....	
Monday .....	} Causes.
Tuesday .....	
Wednesday .... 20	
Thursday .....	} Third Seal.—Motions and Causes.
Friday .....	
Saturday .....	
Monday .....	} Petitions and Short Causes.
Tuesday .....	
Wednesday .... 23	

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.*

*At Lincoln's Inn.*

Monday .... Dec. 4	} First Seal.—Motions and General Paper.
Tuesday .....	
Wednesday .... 6	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday .....	
Wednesday .... 13	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Second Seal.—Motions and General Paper.
Tuesday .....	
Wednesday .... 20	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Third Seal.—Motions and General Paper.
Tuesday .....	
Wednesday .... 23	
Thursday .....	} General Paper.
Friday .....	
Saturday .....	
Monday .....	} Unopposed Petitions, Short Causes, and Adjourned Summonses.
Tuesday .....	
Wednesday .... 23	

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

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## NOTICE.

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## THE JURIST.

LONDON, DECEMBER 2, 1865.

THE goodwill of a partnership business is a partnership asset, to be sold in case of a dissolution, so far as that can be done without imposing restrictions upon any of the late partners. Lord Rosslyn's decision to the contrary in *Hammond v. Douglas* (5 Ves. 536) is clearly not law; and *Burfield v. Rouch* (31 Beav. 241) seems to be also wrong. (See 15 Ves. 227). But as a retiring partner, or, in case of a dissolution, the late partners, cannot be prevented from carrying on the same business in the same neighbourhood, and soliciting the custom of those who dealt with the late firm, the goodwill is practically valueless, save so far as it may be attached to, and sold with, the house or place in which the business was carried on, or the right to use the partnership firm. Thus, where the business of tobacco brokers was carried on by two brothers, under the firm of A. & W. Grant, A. Grant being either the principal, or a partner with W. Grant, who assisted him either as clerk or as partner in the management of the business, and was ostensibly a partner, and after A. Grant's death continued to carry on the business in the same house, and it was proved that the business could not have been sold as annexed to the house or otherwise, unless W. Grant would covenant not to carry on business in the neighbourhood, it was held, that W. Grant, although he had acted as executor of his brother, and had employed part of the assets in the business, was not accountable to the estate for the value of the goodwill. (*Davies v. Hodgson*, 25 Beav. 177; see *Cook v. Collingridge*, Jac. 607; *Coll. Part.* 174; 27 Beav. 456). And in another case, where a partnership, carried on by W. Johnson and J. Johnson, under the firm of S. Johnson & Sons, had been dissolved by the death of one of the partners, it was held, that it would be wrong, in putting up the partnership property and business for sale as a going concern, to add the words, "with the exclusive right in the purchaser to hold himself out as the successor to the firm," because the survivor might set up in the same street, and call himself the surviving partner. (*Johnson v. Hellely*, 10 Jur. N. S.; part 1, p. 1041; 34 L. J., Ch., 35).

In the last-cited case it seems to have been assumed, that the Court could sell the right to use the late partnership firm as a partnership asset; and for this there is some authority. The ground for the establishment of the doctrine was in some measure cleared by the decision in *Webster v. Webster* (3 Swanst. 491; note); where John Webster, an executor of James Webster, applied for an injunction to restrain David Webster and James Wedderburn, his co-executors, from using the name of the testator in the trade carried on by the defendants, and the injunction was refused, on the ground that no injury could, from such use, accrue to the testator's estate or representative; and that the plaintiff has no right to interfere on behalf of the public. In *Lewis v. Langdon* (7 Sim. 421),

T. Brookman and J. Langdon had carried on business as lead pencil makers, at No. 28, Great Russell-street, under the firm of Brookman & Langdon. After the deaths of the original partners, W. Langdon, the executor and residuary legatee of the surviving partner, carried on the business at the same place and under the same firm. After his death, intestate, F. Langdon, his widow and administratrix, and James Lewis, as his sole next of kin, carried on the business at the same place, and under the same firm. On the death of the widow, James Lewis and another carried on the business, at No. 58, Great Russell-street, under the firm of James Lewis & Co., successors to Brookman & Langdon, and Augustus Langdon, one of the executors of the widow, commenced business as a pencil maker at No. 27, Great Russell-street, under the firm of Brookman & Langdon. The Vice-Chancellor restrained him from using that firm, and expressed his approval of Lord Rosslyn's decree in *Hammond v. Douglas*, observing, that if the goodwill is to be considered as a saleable article, which belongs to the partnership, then it must follow that the surviving partner is under an obligation to carry on the trade for some time after his partner's death, in order that the thing which is said to be saleable may be preserved until it can be sold\*. If the surviving partner discontinued the business, and announced that it was at an end, the goodwill would cease to exist; and as the Court could not compel him to continue it, the goodwill is practically in his power, and therefore must be his. It was, therefore, the right of the surviving partner to continue the business, and the use of the partnership name; and his doing so was no fraud upon the public.

In *Churton v. Douglas* (Johns. 174), the defendant John Douglas, and the plaintiffs Churton and Bankart, had carried on business as stuff merchants at Bradford, under the firm of John Douglas & Co. The defendant retired, in order to carry on business at Manchester, and sold his share and interest in the business, and the goodwill thereof, to Churton & Bankart, and first, and notice of the dissolution of the old partnership, and that the business would be carried on under the firm of "Churton, Bankart, & Hirst (late John Douglas & Co.)." Subsequently the defendant commenced business in partnership with three persons, who left the service of the plaintiffs to join him, under the firm of John Douglas & Co., and carried on the business at a warehouse adjoining that of the plaintiffs. Sir W. P. Wood, V. C., granted an injunction to restrain the defendant from carrying on the business of a stuff merchant under the firm of John Douglas & Co. His Honor said, "Goodwill, I apprehend, must mean every advantage; every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself; that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business. . . . The name of

\* See *Turner v. Major* (3 Giff. 442).

a firm is a very important part of the goodwill of the business carried on by the firm. A person says, 'I have always bought good articles at such a house of business; I know it by that name, and I send to the house of business identified by that name for that purpose.' There are cases every day in this court with regard to the use of the name of a particular firm, connected generally, no doubt, with the question of trade-mark. But the question of trade-mark is, in fact, the same question. The firm stamps its name on the articles. . . . That the name is an important part of the goodwill of a business is obvious, when we consider that there are at this moment large banking firms, and brewing firms, and others in this metropolis which do not contain a single member of the individual name exposed in the firm." His Honor, then advertising to the argument, that the plaintiffs could not, by purchasing the goodwill, acquire the right of using the firm of John Douglas & Co. simpliciter, as that might inconvenience the defendant, said, "That argument may be very true, but the answer is, that the plaintiffs have never asserted any such right. They have never claimed the right to call themselves John Douglas & Co. simpliciter. They applied to the defendant for leave so to call themselves, and he declined to give them such leave." The judgment was rested partly on the conduct of the defendant in withdrawing the plaintiffs' servants, and on his circular, from which it was inferred that he represented himself as continuing the old business; and, as his Honor expressly stated in his judgment, that he did not rely on the fact of the use of the firm as the only ingredient in the case, the case can only be classed with those in which the Court gives relief against misrepresentation, and cannot be relied on as establishing the proposition, that the sale of the goodwill of a firm without more disables the vendor or a stranger from carrying on a similar business under the same firm, although it is exactly descriptive of the person or persons so carrying on the business. As it has been settled that the mere sale by John Smith of the goodwill of his business does not prevent him from setting up in the same business, in the same street, under the name of John Smith, it would seem that such a sale would imply no other restriction upon the vendor's right to carry on business in the same manner as he might have done if he had never sold a business—leaving him only bound, in common with all other persons, to abstain from misrepresentations injurious to the vendee. For, as Sir J. L. Knight Bruce said, in the famous case of *Burgess's essence of anchovies* (*Burgess v. Burgess*, 17 Jur. 292), "All the Queen's subjects have a right, if they will, to manufacture and sell pickles and sauce, and not the less that their fathers have done so before them. All the Queen's subjects have a right to sell them in their own name, and not the less so that they bear the same name as their father."

In *Smith v. Everett* (27 Beav. 446), C. W. Everett and W. Smith carried on business as bankers at Salisbury, under the style of Everett & Smith, their notes bearing the name of the firm, and also the title, "The New Sarum Bank." After the death of Smith the business was continued by Everett alone, under the

same firm and title, and subsequently he admitted Messrs. Pinkney into partnership with him, and they continued the business under the firm of Everett & Pinkney, and the title of The New Sarum Bank. The bank being a bank of issue, a large sum was paid by Messrs. Pinkney to Everett for their admission into the business. It was held that a share of that consideration belonged to the executors of Smith, as part of the partnership assets. The Master of the Rolls, in his judgment, said, that if the whole business had been sold, Everett might after the sale have carried on the very same business, on the very same premises (which belonged to him), and though he might not have been entitled to use the words "The New Sarum Bank," he might have changed the word "new" into "old."

In *Robertson v. Quiddington* (28 Beav. 529), Morgan and Quiddington had carried on business as tailors in Albemarle-street, under the firm of Morgan & Co., the capital belonging to Morgan. Morgan bequeathed two-thirds of his interest in the goodwill to Robertson, and the remaining third to Aubin. The executor assented to the bequest to Robertson, and sold the testator's share in the business premises to Quiddington, who continued the business, and as it seems, under the firm of Morgan & Co. A demurrer to a bill by Robertson, asking for a sale of the entire goodwill, and an account of the profits in the meantime, was allowed. The Master of the Rolls said—"The case of *Lewis v. Langdon* appears to me to establish very clearly that the firm's name (whatever its value may be) survives to the remaining partner, and that, consequently, it could not be sold; and it is obvious that without this it would produce no value at all."

The last case to which we shall refer is *Banks v. Gibson* (11 Jur., N. S., part 1, p. 680), where the business of pencil makers had been carried on by R. Gibson and Joseph Banks, and, after the death of Banks, by Gibson and the administratrix of Banks, under the firm of Banks & Co., at the Greta Works in Keswick, which were the sole property of Gibson. The latter partnership was dissolved by agreement in 1864, no provision being made as to the goodwill. After the separation, Gibson continued the business at the Greta Works, and issued trade bills, headed "Established 1832: Banks & Co., black lead pencil manufacturers to her late Majesty Queen Adelaide," &c., and stamped "Banks & Co.," on his pencils. The plaintiff established himself in business as a pencil manufacturer, using the firm "Banks & Co.," and sought to restrain Gibson from using that firm. But the Master of the Rolls refused to interfere, holding that the firm was an asset of the partnership, and, if the concern had been sold, would have been sold with it. As it was not sold, each of the late partners was entitled to use it as before.

The cases do not appear to be satisfactory, or easily reconcilable. If it be true, that the goodwill of a partnership business includes the right to use the firm under which it has been carried on, and is an asset, the opinion of the late Vice-Chancellor of England in *Lewis v. Langdon*, and of the Master of the Rolls in *Robertson v. Quiddington*, that on the death of a part-



ner the right to use the firm belongs in equity to the survivor, without liability to account, cannot be maintained. On the other hand, there is great inconvenience in the doctrine, that independently of contract, each partner may, after dissolution, use the firm of the late partnership; for it must not be forgotten, that the firm, though it may be a trade-mark, may also be an indication of the persons carrying on the business. If John Smith and James Brown carry on the business in partnership under the firm of John Smith, it would be hard upon Smith if, after dissolution of the partnership, Brown could continue the business under the firm of John Smith; and the addition of the words "and Co." does not seem to make any material difference. There can, of course, be no such objection to the use of the firm, preceded by the word "late;" and it is submitted, that the Courts have gone too far in protecting, as a right of property, the use of a firm or trade-mark which misleads the public as to the persons by whom the business is really carried on. (See *Hall v. Barrows*, 9 Jur., N. S., part 1, p. 483; 10 Id. 55; and *Bury v. Bedford*, 9 Id. 956; 10 Id. 503).

WE find that the statement in our last number, that the advertisements of the Council of Law Reporting were rejected by the other weekly law periodicals is incorrect, so far as the "Solicitors' Journal" is concerned. We regret the unintentional misstatement.

### Correspondence.

TO THE EDITOR OF "THE JURIST."

Sir,—In the circular recently issued by the Council of Law Reporting it is said, Mr. Beavan at the Rolls, Messrs. Best & Smith in the Queen's Bench, and Messrs. Hurlstone & Colman in the Exchequer, "have declined to accept appointments under the council, though strongly solicited so to do, and prefer to continue their reports as separate publications. The council have therefore appointed other gentlemen reporters in their several courts." This statement, together with the frequent mention of our names in connexion with this subject, impose on us the duty alike to the profession and ourselves, to lay before it a full statement of our negotiations with the council of law reporting.

On the 3rd August, just one week before the commencement of the long vacation, the proposal was made to us by the council to take office under them. However objectionable the scheme appeared to us in many respects, still with the view of putting an end to the present unsatisfactory state of the reporting system, and preventing the unseemly spectacle of the introduction of a SEVENTH set of reports, we thought it right to listen to their overtures for amalgamation.

The 11th rule of the scheme provides, that "The editors and reporters shall be barristers, and shall be appointed and removable by the council; but the appointment of the reporters in each court shall be subject to the approval of the chief or presiding judge." We pointed the attention of the council to what we supposed to be an oversight, namely, that according to the language of this rule, any reporter might be removed at the pleasure of the council. To this the council having replied that there was no

oversight, for such was intended, we answered, as the fact was, that we were invited to throw up our valuable reports, and take office as reporters under them, liable to be dismissed at their pleasure, without control from the court or any other quarter, and without giving us any compensation whatever: that rule 11, in its present form, was meant to meet the case of future reporters was intelligible, but that it was very difficult to suppose it was ever intended to apply to persons like ourselves who abandoned vested interests to join in the scheme. Moreover, that the council were a fluctuating body, so that however high our confidence in the fairness and honour of its present members, they might at any moment, especially if incorporated as the scheme suggests, be replaced by others of a wholly different description. The council however *peremptorily refused to make any alteration in the scheme in this respect*, and a subsequent offer made by us to refer the matter to the judges of the Queen's Bench, and accept the proposal in its existing form if they thought we ought to do so, having met with the same fate, we felt compelled, in common justice to ourselves, to reject the proposal of the council as unreasonable.

The council rested their refusal on the ground that they could not modify the scheme without calling a meeting of the bar. Assuming this excuse to have been made bona fide, it affords no answer to our objection; but we cannot help observing that the council have not always shewn the same coyness. In the course of our correspondence with them, we expressed our dislike to the system of editors with *undefined powers*, as calculated to introduce a divided responsibility into reports, and supply a means of unconstitutional interference with the decisions of the judges. The council on this, without calling any meeting of the bar, offered to allow any difficulty that might arise about the duties of the editors "to be referred either to the judge or the council;" on which concession (utterly nugatory as we felt it would be if the council had an uncontrolled power of dismissing the reporters at their pleasure) we abandoned that objection. Again, rule 21 provides that the invitations for subscribers "shall contain an announcement that it is considered essential for carrying out the scheme that the aggregate amount of subscriptions, inclusive of any advance from the Consolidated or Suitsors' Fund, in respect of the first moiety of the salaries or otherwise, shall reach 10,000*l.* at the least." By the confession of the council their subscriptions have fallen considerably short of this sum, yet, without calling any meeting of the bar, they have proceeded to launch the scheme. They contend that rules 27 and 28 authorise this proceeding, but the point is at least debateable.

It has been pressed upon us by some that as other regular reporters have accepted the scheme, we ought to follow their example. How those gentlemen are situated with regard to the property in their reports we are ignorant, and with respect to many of them, we fearlessly assert that the mode in which they have conducted their reports of late years is not a light to guide but a beacon to warn.

The circular in question announces that the reports issued by the council are to be called "The Law Reports." This expression is unfortunate, for of the three common-law courts, two (the Queen's Bench and Exchequer) expressly refuse to recognise the council, or grant their reporters any official status whatever; and the third (the Common Pleas) has given its sanction to a new series of reports in continuation of the long-established reports in that court.

We are, Sir, your obedient servants,

W. M. BEST.

G. J. PHILIP SMITH.

London, Nov. 30, 1865.

TO THE EDITOR OF "THE JURIST."

Sir,—I have seen with some surprise a letter, signed "E. T. Hurlstone," in your publication of Saturday last, and also in the *Solicitors' Journal*, in which my name is mentioned in a manner which is wholly unwarranted, and not in accordance with the fact.

It is not true that "the long-established series of authorised reports in the Court of Common Pleas," published by me has ceased, or that *that series* will, "with the approbation of the Court," be continued by the gentlemen named in that letter.

It is true that Mr. Smith, the Queen's Bench reporter, did attempt to induce the Court of Common Pleas to believe that I had, by acceding to the new scheme of law reporting, abandoned the position of "authorised" (as the writer of the letter is pleased to call it) reporter of the court, which I have filled for nearly forty years, and to recognise others in my stead. I did not condescend to offer any opposition to this unhandsome attempt, because I knew that it could not succeed. *It has failed.*

I still continue, "with the approbation of the Court"—expressed not in words only, but in acts—the senior reporter of the Common Pleas; and so long as I fill that office, I will afford Messrs. Harrison & Rutherford (as I have invariably done to every gentleman who had a right to ask it) access to the written judgments, which are handed to me alone; but nevertheless so as not to interfere with interests already vested.

As to the approval of the judges generally, it does not become me to speak. Of the determination of the Court of Queen's Bench, with respect to the new scheme, I know nothing more than what I glean from Mr. Hurlstone's extraordinary and uncalled-for letter. Of the Common Pleas, knowing a little more, I may venture to say, that the judges do not disapprove of the step which I have taken, though they have not thought fit collectively to express any opinion. Individually I know that they view the scheme with favour. As regards the Exchequer, I will only say, that I have before me the May number of the *Law Magazine*, at p. 1046, which appears an extract from a letter addressed by the Lord Chief Baron to the Attorney-General, officially acknowledging the receipt of the Bar Report, in which his Lordship writes—"The report which you have done me the honour to send has 'my approval,' and will have 'my support,' as far as I have any to give." "Reporting," adds his Lordship—I insert this with some reluctance—"has become a nuisance; and, like sewage, it has become very difficult to know what to do with it."

The true sentiments of the judges on the subject (that is, of reporting) will, I believe, be found in the following note addressed by Chief Justice Erle to Sir Fitzroy Kelly on the 3rd instant:—"The judges collectively find it to be their duty not to interfere actively in respect of the proposed system for reporting, as conflicting interests are concerned. The same answer applies in degree to the judges of the Court of Common Pleas collectively—subject to the observation, that we approve of the appointment of Messrs. Scott and Bompas, and hope that their reports will succeed." His Lordship did me the honour to express himself in similar kind terms, in a note addressed to myself shortly before the term.

The respected judge of the Probate and Divorce Courts has also signified to Sir Fitzroy his full recognition of the scheme, with his hearty wishes for its success.

It may not, perhaps, be out of place, if I here acknowledge the motives which induced me to abandon my "separate existence" as a reporter. When I found the voice of the profession so loudly expressed in fa-

vour of a change, I thought it would not become me to shut my ears to the call, or accord with my interest to close my eyes to the consequences of disregarding it. And, when I found that more than one-half of my supporters had become subscribers to "The Reports," I thought it wise to save what I could from the wreck, before it was too late. I wish my estimable friends of the other two common-law courts could have been induced to take the same common-sense view of their own interest—to say nothing of that of the profession.

To any other journal, I should have apologised for the length of this letter; but from you I have a sort of prescriptive right to a column, seeing that I am the sole survivor of the three to whom "The Jurist" owed its being.

Yours faithfully,

Temple, Nov. 30, 1866.

JOHN SCOTT.

[If Mr. Scott were one of our progenitors, we would be a crucial instance of the transmutation of species by natural selection. We were brought up by hand, and Mr. Scott held the spoon from which we first imbibed Common Pleas law—that was all. We can just remember that we thought that pabulum washy.]

### Review.

*Principia Prima Legum; or an Enunciation and Analysis of the Elementary Principles of Law in its several Departments.* By GEORGE HARRIS, Esq., F.S.A., of the Middle Temple, Barrister at Law, one of the Registrars of the Court of Bankruptcy, and Author of "The Life of Lord Chancellor Hardwicke," "The True Theory of Representation in a State," and "Civilization considered as a Science." Part 1. 8vo., pp. 235. [Stevens & Sons.]

In the title of the work the word "law" may mean positive law in general—the subject-matter of jurisprudence, or it may mean the laws of England. If the former, we may expect to find in the book an enunciation of the principles of jurisprudence, that is to say, an indication of the main and subordinate divisions of the subject, and of the conclusions which have been reached regarding them by observation and reasoning; the main divisions being—1, the sources of positive law, and the mode of its genesis; 2, the various subject-matters to which it relates; and, 3, its objects or ends. But if English law is the subject of the book, then we may look to find in it a collection of the general rules of that law, in orderly arrangement. What an analysis of the elementary principles of law is likely to be we cannot pretend to say. Failing, then, to gather from the title or description of the book a distinct notion of its nature, we take a sample from the bulk; and opening the book by chance at p. 193, we find—

"Tit. XXXIII.—6. *Executors and Administrators.*

"1. Executors and administrators are persons who are by law authorised and empowered to stand in the place of, and to represent, as far as the management and disposal of their property is concerned, certain deceased persons, who have either by will delegated to them this trust, or on whom it has been imposed by the authority of the law.

"2. The law requires, that as far as possible the intentions of persons deceased shall be carried out to the full in all respects by the parties representing them, and for that purpose it confers upon the parties last named all the necessary authority and power for carrying such presumed desire and intention into effect."

Then follow paragraphs relating to the presumed intentions of deceased persons; the care required of executors; the origin of the authority of executors and administrators respectively; the leading duties of an executor; persons capable of being executors; joint responsibility of executors and administrators; power of executors to act separately; remuneration; liability for loss; transmission of representation; difference between executors and administrators; executors may not purchase any part of the assets; devastavit; more as to joint liability; responsibility of executors for acts of testator; the executor must pay interest for assets not properly employed; when gifts to executors are beneficial; difference of powers of executors and administrators; effect of sale of assets for benefit of executor; the subjects following each other in the order or disorder in which we have stated them;—and then we come to the title of Trustees. All the references under the title of executors and administrators are to authorities on English law; but for the proposition in sect. 1, that the law sometimes imposes on deceased persons the trust to stand in the place of and represent themselves so far as the management and disposal of their property is concerned, no authority is cited.

Turning back to "Tit. XXXI.—4. Husbands, in relation to their wives, and marriage generally" (which follows "Tit. XXX.—Parents in relation to their children," and is followed by "Tit. XXXII.—5. Guardians in relation to their wards"), we find the following principles:—

"1. The leading principle of law, in regard to the relationship between husband and wife is, that by the act of marriage the husband and wife at once become, and are thenceforth considered as, blended into one person, having an entire community of feeling and of interest, with which the law will on no account interfere."

[3. As to children.]

"4. As a consequence of this union, the property belonging to either party becomes common to both, vesting in the husband as the protector and manager of it on behalf of his wife as well as himself. Neither party can, therefore, give or convey his or her property to the other.

"5. Nevertheless, through the intervention of third parties, who may hold property as trustees for them, property may be received, and held separately for either the husband or the wife, independent of the other, and made use of by him or her as though they were unmarried."

Then follow some "principles" extracted from the civil law and from Grotius; then "Lord Thurlow's and Lord Mansfield's principles regarding conditions in restraint of marriage;" "Lord Ellenborough's principle regarding wagers in restraint of marriage;" the nature of the marriage contract; then "Lord Brougham's principle regarding evidence of marriage contracts" [marriage contracts here, meaning contracts creating the status of marriage]; next "Lord Campbell's principle regarding contracts of marriage" [meaning promises to marry at a future time]; then "De Grey's principle regarding jurisdiction of courts in relation to marriage;" then some odds and ends as to the common law and statutory requisites to the validity of the marriage contract; then more about promises to marry at a future time; then as to clandestine marriages; then more as to marriage ceremonies; then as to the wife's right to maintenance; the liability of a wife to be sued; separate estate; evidence of husband against wife, and vice versa; dissolution of marriage and collusion; Lord Stowell on divorce; principle in Code Napoleon regarding causes of divorce; Lord Campbell on validity of foreign marriages; proof of marriage; and then "Tit. XXXII.—Guardians."

Failing to discover the "principle" of the book by sampling, we turn to the Preface, which fills nineteen pages; of the contents of the first three of which the following may be taken to be a sufficiently correct summary:—Jurisprudence is the loftiest of sciences as regards its aim, and the noblest as regards the mental faculties engaged in its cultivation. It must necessarily be regulated by certain determinate and unerring principles, and its being so is what entitles it to its high rank among those means which have occupied the study of the learned—[its place among those sciences which have not occupied the study of the learned being left unsettled.]—*For these reasons*, the main object of the present work "is to trace to its root each principle of law, and to exhibit, as far as possible, the origin of every rule that has been adopted as our guide in the science of jurisprudence. These principles, when thus deduced, have been illustrated by the quotation of select passages from the judgments of those distinguished men who have long been regarded as the oracles of jurisprudential wisdom." These principles should be kept in view if we wish to avoid error, but they are commonly neglected, as every experienced practitioner knows. "A digest of principles" will be as serviceable to the student as a record or decisions or a compendium of statutes. "In many cases"—(we will not wrong this passage by epitomising it)—"the inquiry into first principles is the only correct and absolutely certain mode of applying the rule of law to the point to be decided. Indeed, this process ought in no instance to be departed from, except where a precisely analogous determination can be shown to have been previously effected. In all cases the decision by rule and by recurrence to primary legal principles, is the course which nature and common sense dictate, and which alone reason is acknowledged and appealed to, as the real authority by which the matter is determined. When, however, the exact point at issue has already been solved by a competent tribunal, reference is had to such prior decision, in order to avoid an unsettling and questioning of the judgment so pronounced." Principles ought to be kept in view in judgment and in argument, and the more rational a legal axiom is, the more correct it must be. It is strange, that while there are so many elaborate digests of decisions, there is no complete analysis of the first principles of law. The great attention now paid to cases, renders the inquiry into elementary principles the more essential. In the deduction of principles here attempted to be made, recourse has been had, not only to elementary works, but also to leading judgments, and occasionally to forensic arguments. In most instances, references are made to authorities. "When an authority is quoted, the author is of course himself responsible for the correctness of the principle enunciated" (e. g. the principle, cited above, that on marriage the husband's property becomes common to himself and his wife).

The work is intended to be divided into five parts:—1. Constitutional and General Law. 2. Rights of Persons. 3. Property of Persons. 4. Crimes. 5. Mode of enforcing the Operation of the Laws.

Part I, which forms the present volume, is divided into the following titles:—1. Primary principles as regards the essence and constitution of law in general; 2. The object and intent of law; 3. The province of law; 4. The origin of civil government; 5. Different kinds of government; 6. Authority and prerogative of the sovereign; 7. Allegiance of to the sovereign; 8. The right to make laws; 9. Constitution and power of legislative bodies; 10. The mode of operation of laws of each kind; 11. Variety and classification of laws; 12. Laws domestic and international; 13. Laws of peace and war; 14. Piracy and privateering; 15. Civil

and canon law; 16. Common law; 17. Statute law; 18. Prohibitory laws in general; 19. Civil liberty; 20. Civil rank; 21. Civil rulers; 22. Obligation to obey laws; 23. Exemptions from legal jurisdiction, aliens, infants, lunatics, and persons under duress; 24. Conflict of laws; 25. Corporations; 26. Partnerships; 27. Officers of justice; 28. Professional men; 29. Tradesmen; 30. Parents; 31. Husbands; 32. Guardians; 33. Executors and administrators; 34. Trustees; 35. Masters and servants; and 36. Principals and agents.

We have preferred to display, perhaps at two great a sacrifice of space, rather than to describe, the hopeless confusion and inaccuracy of the author's ideas as to the object and details of his work, and we have only to add, for the guidance of inexperienced students, that no one seeking information on jurisprudence, or on English law, from any point of view, or for any purpose, can derive the slightest assistance from this ridiculous book.

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## THE JURIST.

LONDON, DECEMBER 9, 1865.

SOME cases which have been decided on appeal this year both in the House of Lords and in the Exchequer Chamber, present features of so much interest, that it is worth while to draw specific attention to them for the benefit of those who may have been precluded from paying a close attention to the course of the late decisions.

The first we would draw attention to is that of *Blades v. Higgs* (34 L. J., C. P., 286), in the House of Lords, as to the property in game. As far back as the time of Lord Holt, it had been laid down, that if A. shoots game on B.'s ground and kills it there, the property in the dead game is in B., but that if he hunts it out into C.'s land and kills it there, it is his own, unless B. claimed proper privilege, in which case it would still be B.'s. And from that time these propositions have been accepted, and quoted as indubitable law. In this case, however, we have been presented with the curious spectacle of a proposition of law laid down by so great an authority as Lord Holt, and quoted with approbation ever since, being contested up to the highest court of appeal, in the face of the unanimous decisions of the different tribunals, and finally settled only there. The point absolutely decided was, that if A. kills game on B.'s land, it is B.'s property; but the decisions of the Lord Chancellor, Lords Cranworth and Chelmsford, are worthy of attention, particularly that of the Lord Chancellor, as giving a very succinct and lucid exposition of the law of the subject, which agrees with the generally received doctrines and the above propositions of Lord Holt, except that Lord Chelmsford expresses a doubt as to A.'s right, even when he chases it from B.'s land and kills it in C.'s.

A second case is that of *Rickets v. The Metropolitan Railway Company* (34 L. J., Q. B., 267). The Court of Queen's Bench held, that if a railway company, during the execution of their works under their act of Parliament, temporarily place a bridge on a highway, which renders access to a public-house more difficult, and consequently causes fewer people to use it, the publican can claim compensation under the Lands Clauses Act. But Erle, C. J., Pollock, C. B., Channell and Pigott, BB., constituting the majority in the Exchequer Chamber, overruled this decision and the two cases of *Senior v. The Metropolitan Railway Company* and *Cameron v. The Charing-cross Railway Company*, on the ground that no action would have lain if the company had not been authorised by their act, and that, even if it would, yet the damage was personal, and not to the land, and therefore not within the Lands Clauses Act; whilst Byles and Keating, JJ., thought exactly the reverse. The effect of this decision just at present, whilst the numerous metropolitan railways are being made, is most important, and the aggregate amount of money which it will save the railways from paying is enormous; the aggregate amount of irreme-

diable loss to private persons will, on the other hand, be very grievous, and add to the grievance that they already complain of, viz. the liability they are under of being turned out summarily from their houses, to the destruction of their business connexion, without adequate compensation. It is a grave question how far the law on this subject should not be made the subject of legislative interference, for it seems only just that some stop should be put to the terrible amount of private ruin and loss that is often entailed by the exercise of the arbitrary powers of railways in large towns under these acts of Parliament.

The next case is the important one of *Tapling v. Jones* (34 L. J., C. P., 342), setting at rest the very curious litigation which has been going on for some years respecting the right of a man to stop his neighbour's lights. In this case A. was the owner and occupier of a house of three stories, with an ancient window in each; he altered the windows on the two lower floors, left that on the third untouched, and put two additional stories with new windows. B., the owner of the adjoining premises, could not obstruct the new windows without also obstructing the old ones; and he, therefore, claimed a right to build a wall, which, in stopping the one set also stopped the other. A. acting, no doubt, under advice, and according to what was considered the then state of the legal authorities, did not contest this right, but blocked up his new windows, and claimed then to have a right to demand that B. should now pull down his wall. This claim B. denied to be a good one, and he refused to do so, whereupon A. brought an action against him. The Court of Common Pleas holding themselves to be bound by the decisions of *Renshaw v. Bean* and *Hutchinson v. Copestake*, held unanimously that B. was entitled to block up the old windows if he could not otherwise block up the new ones, though Erle, C. J., and Williams, J., intimated a disapproval of those cases. But while Erle, C. J., and Williams, J., held, that on the stopping up of the new windows the wall ought to be pulled down, Byles and Keating, JJ., held, that what had been done amounted to an abandonment of the old lights, and that, therefore, the wall might stand. In the Exchequer Chamber, Wightman and Crompton, JJ., held that, assuming the wall was originally put up rightly, yet now it ought to come down. Bramwell, B., and Blackburn, J., held that *Renshaw v. Bean* was bad law, and that there never was a right to stop the old windows in order to stop the new ones; and Pollock, C. B., and Martin, B., held that *Renshaw v. Bean* was good law, and that the wall ought to stand.

In the House of Lords, the Lord Chancellor and Lords Cranworth and Chelmsford were unanimous in holding that there never was any right to put up the wall, and thus finally decided the law on the subject. Anything more masterly than the short and clear way in which the matter is put by the Lord Chancellor can hardly be imagined, particularly after reading the judgments of the different learned judges. The matter is made so clear, and his argument is so conclusive, that one really wonders, on reading it, how there could have been doubt. And one has to turn back to the



judgments in the Exchequer Chamber again to realise the fact.

The next case is *Scott v. The London Dock Company* (34 L. J., Ex., 220), where the Court laid down the rule as to the presumption of negligence arising from the mere happening of the accident itself—a doctrine which, our readers will recollect, became of some importance some time back in railway cases, where in one case it was broadly laid down, that an accident happening, was itself evidence of negligence, but which had been remarked on in a desultory way from time to time, till the state of the law was become very uncertain. The majority of the Court (Crompton, Byles, Blackburn, and Keating, J.J.), held, that there must be reasonable evidence of negligence; that where a machine, causing an accident, is solely under the management of a man, or his servants, and the accident is such as, in the ordinary course of things, does not happen to those who have the management of machinery, and use proper care, this affords reasonable evidence, in the absence of an explanation, that the accident arose from want of due care; and that such reasonable evidence existed, where a bag of sugar fell from a crane on a man who was passing, and no explanation was offered of the cause of its fall. Erle, C. J., and Mellor, J., dissented, and could not see that there was such reasonable evidence.

The last case to which we wish to draw attention, is *Hall v. Johnson* (34 L. J., Ex., 220), in which the Court of Exchequer Chamber decided, that an overlooker in a mine was a fellow servant with the miners, so that the master was not liable for his negligence causing injury to them. And we do it for the sake of the observations of Erle, C. J., in delivering the judgment, in which the other judges concurred. He says, "We take the principle to be clearly established, from a series of decisions in this Empire and in America, that where a labourer is damaged by the negligence of a fellow labourer, the master is not responsible. Whether they are fellow labourers, is sometimes matter of doubt. My Brother Williams brought this idea into prominent relief by saying, that sometimes a person called a fellow labourer should rather be considered to stand in the position of deputy master; and if an act of negligence, causing injury to a workman, was clearly brought home to one in the position of deputy master, it might be a question whether the real master was not responsible. We wish to reserve our opinion in respect to this question to the time when the facts of the case may give rise to it."

Such are the more generally important cases which have been lately decided, though only a small portion of the actual appeal cases; as we observe, that from June twelvemonth till the beginning of the late sittings, there have been thirteen appeals from the Queen's Bench, four from the Common Pleas, and nine from the Exchequer, decided in the Exchequer Chamber, which only reversed four decisions of the first, two of the second, and one of the third, of these Courts; and looking to the character of many of the cases, it is questionable whether the facility of appeal is advantageous to any but the lawyers.

## Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—We are compelled to trouble you with another communication in consequence of Mr. Scott's letter in "THE JURIST" of last week, in which he charges one of us with "unhandsome" conduct towards him.

Mr. Scott wholly misconceives his position. He labours under the delusion, that because he has abandoned the ancient and honourable post held by him as the acknowledged and independent reporter of the Court of Common Pleas, and taken service under a body which can mutilate his reports at pleasure, and dismiss him at any moment without notice, reason, or compensation, the office he has thus vacated has ceased to exist. It is far otherwise. Messrs. Harrison & Rutherford, with the concurrence of the Court, have assumed it. We, with others, advised that course, and see nothing in our having done so "unhandsome" to Mr. Scott or any one.

Mr. Scott concludes his letter thus:—

"It may not, perhaps, be out of place, if I here acknowledge the motives which induced me to abandon my 'separate existence' as a reporter. When I found the voice of the profession so loudly expressed in favour of a change, I thought it would not become me to shut my ears to the call, or accord with my interest to close my eyes to the consequences of disregarding it. And, when I found that *more than one-half of my supporters* had become subscribers to 'The Reports,' I thought it wise to save what I could from the wreck, before it was too late. I wish my estimable friends of the other two common-law courts could have been induced to take the same common-sense view of their own interest—to say nothing of that of the profession."

When we require advice we seek it, and this certainly shall never be from a gentleman who, while tendering us his advice as to the mode of conducting our reports, avows in the same breath that he has just made shipwreck of his own.

We are, Sir,

Your obedient servants,

W. M. BEST,

G. J. PHILIP SMITH.

London, Dec. 7, 1865.

## EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

MICHAELMAS TERM, 1865.

### FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Jon Scott the younger, who served his clerkship to Mr. John Scott, of King William-street, London; and Mr. John Richard Tindale, of London.

2. Thomas William Eastwood, who served his clerkship to Mr. Abraham Greenwood Eastwood, of Todmorden, near Halifax; and Messrs. Tor, Janeway, & Tagart, of London.

3. Thomas Rowland Hargreaves, who served his clerkship to Messrs. Swainson & Son, of Lancaster.

4. John Daniel Banks, who served his clerkship to

Mr. George Webster, of Liverpool; and Messrs. Gregory & Rowcliffes, of London.

4. Owen Sidney Goody, who served his clerkship to Messrs. Smythies, Goody, & Son, of Colchester; and Messrs. N. C. & C. Milne, of London.

4. Thomas Green, who served his clerkship to Messrs. Becke & Son, of Northampton; and Mr. Robert Metcalfe, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books;—

To Mr. Scott, the prize of the Honorable Society of Clifford's Inn.

To Mr. Eastwood, the prize of the Honorable Society of Clement's Inn.

To Mr. Hargreaves, one of the prizes of the Incorporated Law Society.

To Mr. Banks, one of the prizes of the Incorporated Law Society.

To Mr. Goody, one of the prizes of the Incorporated Law Society.

To Mr. Green, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Alban Gardner Buller, who served his clerkship to Mr. Thomas Pain, of Banbury; and Messrs. Mackeson & Goldring, of London.

William Hawkins Herbert, who served his clerkship to Messrs. Mullings & Co., of Cirencester; Messrs. Eyre & Lawson, of London; and Messrs. Flux & Argles, of London.

Francis Hodding, who served his clerkship to Messrs. Hoddings, Townsend, Lee, & Houseman, of Salisbury and London; and Messrs. Clarke, Son, & Rawlins, of London.

Robert Lunn the younger, who served his clerkship to Messrs. New, France, & Garrard, of Evesham; and Messrs. Vizard & Anstie, of London.

Edward Frederick Mammatt, who served his clerkship to Messrs. Green & Smith, of Ashby-de-la-Zouch; and Messrs. Austen, De Gex, & Harding, of London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidate, that his answers to the questions at the examination were highly satisfactory, and would have entitled him to a prize if he had not been above the age of twenty-six:—

Francis Kerridge Munton.

#### PRIZE FOR LIVERPOOL LAW STUDENTS.

The Examiners have also reported to the Council that, among the candidates from Liverpool in the year 1865, Mr. John Daniel Banks passed the best examination, and was in their opinion entitled to honorary distinction.

The Council have therefore awarded to Mr. Banks the prize, consisting of a gold medal, founded by Mr. Timpron Martin, of Liverpool.

The number of candidates examined in this term was 120; of these 106 were passed, and 16 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,  
London, Nov. 24, 1866.

## Court Papers.

### EQUITY CAUSE LISTS, AFTER MICHAELMAS TERM, 1865.

\* \* The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

#### APPEALS.

Davies v. Shepherd (W., June

3) *Full court*

Blackett v. Bates (W., June

9) *L. C.*

Durell v. Pritchard (pt. heard)

(R., June 30) *L. J.*

Gladholm v. Barker (R., July

7) *L. J.*

Caton v. Caton (part heard)

(N., July 15) *L. C.*

Clutton v. Strode (R., July

17) *L. J.*

Greatrex v. Banton (R., July

18) *L. J.*

M'Intosh v. Great Western

Railway Co. (S., July 24)

*L. C., Hil. Term*

Jefferys v. Dickson (W., July

28) *L. C.*

Williams v. Williams (K.,

July 27) *L. J.*

Cellier v. M'Bean (R., Aug.

2) *L. J.*

Nevinson v. Lennard (R.,

Aug. 7) *L. J.*

Moore v. Marable (R., Aug.

8) *L. J.*

Southern v. Harriman (W.,

Aug. 9) *L. C.*

Yates v. Jack (W., July 10)

*L. C.*

Horsfield v. Ashton (W.,

Nov. 1) *L. C.*

Chadwick v. Turner (R., Nov.

2)

Soady v. Turnbull (S., Nov. 2)

*L. C.*

Williams v. Glenon (R., Nov.

3)

Robson v. Whittingham (K.,

Nov. 4)

Wilson v. Hart (W., Nov. 4)

*L. C.*

White v. Morland (W., Nov.

6) *L. C.*

De Beauvoir v. Benyon (R.,

Nov. 6)

Townsend v. Toker (R., Nov.

7)

Hooper v. Gumm (W., Nov.

10) *L. C.*

M'Lellan v. Gumm (W., Nov.

15) *L. C.*

In re Mellor's Es- } (R.,

tate } Nov.

Mellor v. Mellor } 16)

M'Intosh v. Great Western

Railway Co. (S., Nov. 20)

*L. C., Hil. Term*

Jenkins v. Parry (S., Nov. 21)

*L. C.*

CAUSES.

Baxendale v. West Midland

Railway Co. (M D) *L. C.*

Baxendale v. Great Western

Railway Co. (M D) *L. C.*

Wood v. Seales (F C) *L. J.*

Before the Right Hon. the MASTER OF THE ROLLS.

#### CAUSES, &c.

Kelson v. Egyptian Commer-

cial and Trading Co. (Li-

mitted) (D)

Lee v. Lee (Cause)

Tregar v. Williams (M D)

Tomlison v. Leigh (M D)

M'Dermott v. Seymour (Can.)

Walker v. Ware, Hadlam, and

Buntingford Railway Co.

(M D)

Lambride v. South-eastern

Railway Co. (M D)

Dodsworth v. Marshall (Can.)

Montefiore, Bart., v. Behrens

(M D)

Ormerod v. Roston (F C)

Howard v. Earl of Shrewsbury

(Cause)

Thomas v. Chorley (M D)

Stourton v. Burrell (M D)

Ibbott v. Burrell (M D)

Blaxsome v. Chichester (Can.)

Blaxsome v. Chichester (Can.)

Dickenson v. Burrell (M D)

Dickenson v. Burrell (M D)

Barrow v. Tyrer (M D)

Richardson v. Lancaster and

Carlisle Railway Co. (M D)

Craggs v. Gray } (F C)

Webb v. Gray }

Goodyear v. Bruton (M D)

Verelet v. Midland Railway

Co. (M D)

Windsor v. Campbell (M D)

Weston v. M'Dermot (Cause)

Dec. 5

Freeman v. Bowen (M D)

Fryer v. Davies (M D)

Ludlow v. Bunbury (M D)

Turquand v. Bennett (Cause)

Jones v. Jones (M D)

Clements v. Welles (M D)

Chapple v. London, Chatham,

and Dover Railway Co. (M

D)

Whitlock v. Bunnett (M D)

Rowden v. Yeoman (M D)  
 Peel v. Todd (M D)  
 Bradley v. Fourness (M D)  
 Windley v. Forman (M D)  
 Adnutt v. Wright (Sp C)  
 Armitage v. Coates (Sp C)  
 Lord v. Jeffkins (Cause)  
 Burmester v. Moxon (M D)  
 Cave v. Ellis (M D)  
 Crawshaw v. Allaway (Cause)  
 Reay v. Rawlinson (F C)  
 Percy v. Percy (F C)  
 Bouville v. Lewis (F C)  
 Hampton v. Holman (F C)  
 Hammond v. Whitley (M D)  
 Carr v. Livingston (M D)  
 Powke v. Briggs (Cause)  
 Rose v. Munk (M D)  
 Taft v. Lathbury (M D)  
 Chubb v. Griffiths (M D)  
 Cosens v. Griffiths (M D)  
 Tanner v. Tanner (Sp C)  
 Harrison v. Chapman (M D)  
 Ellice v. North American Colonial Association of Ireland (M D)  
 Curtiss v. Grant (F C)  
 Laing v. Campbell (Cause, Witnesses) Dec. 5  
 Viscountess d'Adhemar v. Bertrand (M D)  
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 Grah v. Thurkle } Chamb.)  
 Wright v. Lowe (Cause)  
 Lyster v. Jerrard (F C)  
 In re Hawke } (F C, from  
 Hawke v. Hawke } Chamb.)  
 Wells v. Templeman (Cause)  
 Swingle v. Reddy (Cause) Dec. 19  
 Straughton v. Tate } (F C)  
 Tate v. Straughton }  
 Richardson v. Goodson (F C)  
 Lord Lilford v. Keck (F C)  
 Eyre v. Britt (Cause)  
 Ibbotson v. Elam (Sp C)  
 Harris v. Cumling (M D)  
 Moss v. Barton (M D)  
 Griffiths v. Bracewell (M D)  
 Yeomans v. Williams (M D)  
 Hennessy v. Bray (F C)  
 Lovejoy v. Crafter (M D)  
 Clark v. Wallis (M D)  
 Carr v. Lister (M D)  
 Simmonds v. Cock (F C)  
 Quinn v. Fowler Butler (M D)  
 Crane v. Wynn (F C)  
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 Brookes v. Davidson (F C)  
 Leasingham v. Haggard (M D)  
 Gee v. Liddell (F C, Summons to vary)  
 Delves v. Strother (Cause)

Corrigan v. Lea (M D)  
 Markwell v. Bull } (F C)  
 Markwell v. Markwell }  
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 Wright v. Blake (Cause)  
 Raphael v. Thames Valley Railway Co. (M D)  
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 Miles v. Miles (M D)  
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 Martin v. Ridley (F C)  
 Solomon v. Davis (M D)  
 Lawton v. Ownsworth (F C)  
 Johnson v. Foulds (M D)  
 Green v. Green (F C)  
 Harvey v. Clarke (M D)  
 Jones v. Martin (Cause)  
 Boyd v. Hoggins (M D)  
 Pettinger v. Ambler (M D)  
 Wright v. Jackson (Cause)  
 Shaw v. Griffiths (M D)  
 Warren v. Watson (M D)  
 Hardwick v. Hardwick (M D)  
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 Copestake v. Hayward } Chambers)  
 Hopkins v. Boardman (F C)  
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 Baker v. Newman (M D)  
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 Waite v. Waite } Ch.)  
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 White v. Webb (M D)  
 Hawkins v. Stanfield (M D)  
 Procter v. Robinson (Cause)  
 Smith v. Edwards (M D)  
 Masters v. Vickery (M D)  
 Jones v. Vallance (M D)  
 Banks v. Parsons (F C, and Summons to vary certif.)  
 Pilling v. Pilling (F C) Dec. 8  
 Bunn v. Pettinger (M D)  
 Mellalieu v. Booth (M D)  
 Lock v. London and Lancashire Insurance Co. (M D)  
 Andrews v. Bohannon (M D)  
 Brown v. Nash (F C)  
 Rowe v. Tonkin (M D)  
 Cameron v. Marquis of Cholmondeley (M D)  
 Anstey v. Newman (Cause, In re Sansom's Estate } (F C, from  
 Sansom v. Hammond } Ch.)  
 Slade v. Birkley (M D).

Sandilands v. Gilchrist } (Cause)  
 Gilchrist v. Sandilands } part hd.  
 Johnson v. Hodgson (Cause)  
 Hansom v. Pugin (M D)  
 Nicholas v. Walsh (M D)  
 Butt v. Imperial Gas-light & Coke Co. (M D)  
 Parsons v. Howkins (M D)  
 Martin v. Headon (M D)  
 Churton v. Frewen (M D)  
 Jupp v. Nicholas (Cause)  
 Boursot v. Stone (Cause)  
 Boursot v. Savage (Cause)  
 Poynder v. Hulbert (M D)  
 Sedgfield v. Sedgfield (Sp C)  
 Gimlett v. Gimlett (F C, and Suma. to vary certificate)  
 Waksfield v. Duke of Buccleugh (M D)  
 Ormerod v. Riley (Sp C)  
 Watt v. Watt (F C)  
 Hubbard v. Latham (F C)  
 Courtis v. Watts (M D)  
 Lees v. Whiteley (Cause)

Estate Co (Limited) v. Sharpe (M D)  
 Hart v. Young (Cause)  
 Webb v. Hunt (M D)  
 Letton v. Goodson (M D)  
 Dimond v. Edgell (M D)  
 Cooke v. Ricketts (M D)  
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 Warden v. Gunning (M D)  
 Mac Lachlan v. Lord (Cause)  
 Bowman v. Clark (F C)  
 Dickson v. Wason (M D)  
 Morrison v. Travis (M D)  
 Clay v. Arrowsmith (M D)  
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 Leaton v. Armstrong (F C)  
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 Pennington v. Pennington (F C)  
 Bridges v. Hinxman (F C)  
 Dunn v. Aggs (Cause)  
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*Before the Vice-Chancellor Sir JOHN STUART.*

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## NOTICE.

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## THE JURIST.

LONDON, DECEMBER 16, 1865.

THANKS to the Legislature and to the decision of the House of Lords in *Peck v. The North Staffordshire Railway Company* (10 H. L. C. 473), the public have obtained satisfactory protection against the railway companies, considered as carriers of goods. As carriers of passengers, however, the railway companies would seem to have the power of dictating whatever terms they may think proper to their passengers.

In order more clearly to apprehend the state of the law, with regard to the carriage of passengers, it is necessary that we should take a short review of the law affecting railway companies as common carriers of goods. At common law, a common carrier of goods was bound to receive goods of the nature of those that he usually carried, and was responsible for all losses till delivery, except those caused by the King's enemies, or by the act of God, or by the default of the owner; and as to the time of delivery, he was bound to use due diligence. More than 100 years ago, the carriers tried to limit their liability by notices. It was at first doubted whether they could do so; it being argued that, like innkeepers, they held a public employment, and had no power to alter their common-law rights and duties. However, they gradually established the power, and it was settled beyond any doubt before the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68, that they could make qualified acceptances of goods, although, according to Mr. Justice Story, they could not, by any special agreement, exempt themselves from all responsibility, so as to evade altogether the salutary policy of the common law. There is a difference of opinion as to whether these notices acted by way of contract, or as restrictions on the public profession of a carrier. It was decided in *Kerr v. Willen* (6 Mau. & S. 150), that in order to bind the owner of goods by the notice, actual knowledge of it must be brought home to him. Previously, then, to the passing of the Carriers Act, carriers could, by notice, made known to the sender of goods, protect themselves from unforeseen losses, but not against losses caused by the fraud or negligence of themselves or their servants. And this state of things ensued. Bankers and others were in the habit of sending valuable packages by carriers, and paying the same rate as for other goods, and the carriers, often being unable to prove actual knowledge in their customers of their notices, became subject to great losses until the Legislature interfered to protect them by means of the Carriers Act, which enacted, that a carrier might, by a notice affixed in his office, state an increased rate of charge for the safe conveyance of certain goods specified in the act when their value exceeded 10*l.*; and unless the value of such goods was declared, and the increased rate paid, the carrier should not be liable for loss or injury, except it arose from the felonious act of his servants. It also enacted that, with regard to the specified goods under the

value of 10*l.*, and all other goods, no public notice or declaration should affect the liability of the carrier, but that he should be liable as at common law; but the act also provided, that nothing therein should extend to annul or in any way affect a special contract between the carrier and the customer for the conveyance of goods. *Hinton v. Dibdin* (2 Q. B. 646) decided that the words of the Carriers Act, "not to be liable for the loss or injury to," are to be taken in their natural sense as exempting the carrier from all loss, whether caused by negligence or accident. The railway companies, when they came into use, at once availed themselves of the power of making special contracts to impose such conditions on their customers as almost entirely removed their liability. *Carr v. The Lancashire Railway Company*, decided in 1852, was the culminating case. The defendants there received a horse to be carried for hire in a horse box. On the ticket it was stated that it was issued subject to the owners taking all risks of conveyance whatsoever, as the company would not be responsible for any injury, however caused. It was found that a collision had been caused by the gross negligence of the defendants' servants, whereby the plaintiff's horse was killed; yet the Court held that there was a special contract by which the plaintiff had taken upon himself all risk, and had agreed that the defendants should not be responsible for any injury, however caused. These cases seem to us to have an important bearing on the present law with regard to passengers, and we shall notice them again. Of the soundness of the interpretation of such a contract as that last adverted to, we do not think there can be much doubt; but it might, perhaps, be open to remark, that the Courts have been somewhat harsh as against customers, in, as it were, taking it at once for granted, that because a man takes a ticket with certain conditions printed upon it, that therefore he contracts on the terms of those conditions. The element of a contract is, that there should be two consenting minds; and when a man is obliged to send a parcel, and there is but one means of doing so, he is under a species of duress; and he would seem to say, "This being the only mode of sending my parcel, I send it on such of your conditions as with reference to your duty as carriers the law will hold to be valid—i. e. on such terms as are reasonable, for you, being common carriers, are bound to take my goods, and cannot indirectly get rid of that duty by imposing terms so unreasonable that you refuse to incur any obligation or risk whatever, and in substance, therefore, refuse to carry." However, from *Walker v. The York and North Midland Railway Company* (2 El. & Bl. 750), it would seem that even in the case of notices personally served, the jury would be bound to infer from the receipt of the notice, and the subsequent sending of the goods, that a special contract on the terms of the notice had been made, unless the sender had in the interim unambiguously refused to deliver the goods to the carriers on the terms of the notice, and the carriers had acquiesced in such refusal. In the case last referred to, the plaintiff actually considered he had protested against the notice. This was the last feather that broke the camel's back,

and the Legislature came to the rescue in the next session of Parliament, and passed the Railway and Canal Traffic Act, 1854. Unfortunately the principal section of that act, the 7th, was very clumsily worded, and gave rise to great difference of opinion, but it has now been settled in the House of Lords, in *Peck's case*. The Lord Chancellor there adopts the interpretation of Lord Chief Justice Jervis in the case of *Simons v. The Great Western Railway Company*, that it is equivalent to a simple enactment that no general notice (i. e. relating to cattle or goods) given by a railway company shall be valid in law for the purposes of limiting the common-law liability of the companies, though such common-law liability may be limited by such conditions as the court or judge shall determine to be just and reasonable, but with this proviso, that any such condition so limiting the liability of the company shall be embodied in a special contract in writing between the company and the owner or person delivering the goods to the company, and which contract in writing shall be signed by such owner or person. The liabilities and privileges, with respect to the particular goods provided for by the Carriers Act, are reserved. The 2nd section of the Railway and Canal Traffic Act enacts, that railway companies shall afford reasonable facilities for receiving, forwarding, and delivering their said traffic without preference; and also that companies forming part of a continuous line shall afford reasonable facilities for receiving and forwarding all traffic arriving by one, by the other, without any unreasonable delay, and without preference. By the interpretation clause "traffic" was to include passengers, goods, animals, &c. By one of the provisos of the 7th section, the company are not to be liable beyond a limited amount in certain cases, unless the value is declared at the time of delivery, when the company might demand an extra payment.

Thus we see that, as the law now stands, every company is bound to afford reasonable facilities for receiving, forwarding, and delivering traffic without undue preference; and in the case of continuous traffic, to forward it without unreasonable delay. They are also, when no signed contract is entered into, insurers for the due delivery of all goods except the particular sorts of goods specified by the Carriers Act, for which they are not at all liable unless their value is declared by the sender, excepting also that they are insurers only to a limited amount for certain animals specified by the Traffic Act, unless their value be declared at the time by the sender. Further: although special contracts may be made, providing they are in writing and signed, still the companies cannot impose any conditions they choose on their customers—since a customer is not bound by the conditions unless they are reasonable; and the companies are also liable for negligence in not delivering within a reasonable time.

In the case, therefore, of railway carriage of goods, the public have every protection they can reasonably desire; and in our next number we will proceed to consider whether or no any protection is extended to passengers.

## THE MASTER OF THE ROLLS ON LAW REPORTING.

MR. BEAVAN commences the thirty-fourth volume of his reports with a postscript of eight pages, containing a correspondence with the council of law reporting. The following is Mr. Beavan's answer to the invitation of the council to join their set:—

"Stone-buildings, Lincoln's-inn,  
Aug. 4, 1865.

"Dear Sir,—In answer to your letter of yesterday, stating that it had been resolved that the proposed New Reports should be commenced in Michaelmas Term next, and asking me, at the request of the sub-committee, consisting of Sir Fitzroy Kelly, Mr. Daniel, and Mr. Greene, whether I was willing to accept a reportership in the court of the Master of the Rolls, upon the terms of the scheme of the bar committee, as applicable to reporters, I have to state that I altogether decline the proposal.

"I consider the offer of 200*l.* per annum for a three years' speculation, made to one of the oldest members of the Chancery bar, and the senior authorised reporter, in return for a year's laborious duty, as a simple insult, and one more fitting to be made to my clerk than to myself.

"I have already stated to Mr. Daniel, on his recent application to me, that I will not enter into any speculation unless the payment of my income as an authorised reporter is assured to me, and to that I still firmly adhere.

"Observe! the committee offer me, a barrister of thirty-five years' standing, a contingent income amounting to one-tenth of the salary of a Taxing Master, one-seventh of that of a chief clerk, one-sixth of a registrar in bankruptcy (an office which I have myself declined), and, in truth, a sum which is below the average of the salaries of the tipstaff, ushers, and trainbearers of the court. Is this what, in the preliminary address of the council of the 1st March, 1865, they call the establishment of a set of reports 'upon the basis of a fair regard for existing interests?' Most men would blush in making me such a proposal.

"In addition to this, it appears to me that the committee are neither in a position to commence this great undertaking nor to make me this proposal. I understand from Mr. Daniel that the 10,000*l.*, 'considered essential' by the 21st article of the scheme, has not yet been subscribed, and that the guarantee of half the reporters' salaries (5000*l.*), referred to in article 25, has not been provided. But he states that some arrangements have been entered into with Messrs. Clowes & Co. to undertake the printing and management of the reports for three years, on having one-half the reporters' salaries guaranteed during that period from some other quarter. He informs me that some steps are being taken for obtaining this guarantee from members of the profession, but that the attempt was recent. The sums he named as already subscribed appeared to me very trivial compared with the amount required (5350*l.* a year). I have not much confidence in, or respect for, such a charitable appeal to the bar, and I have certainly too much self-respect to be dependent on it.

"Again, it is publicly stated that the number of subscribers already obtained does not exceed 1200. This would produce at the end of the year, when received, 6000*l.* instead of 10,000*l.*, 'considered essential'; and thus, in starting, there would be both a deficiency of 4000*l.* a year and an absence of the requisite guarantee. It appears to me, therefore, that the committee contemplate a serious deviation from the plan they are authorised to carry into effect, and that the result

would probably be, that the subscriptions, being exhausted, or nearly so; by the printers, managers, &c., the authors' incomes, already halved, would have again to undergo a similar operation.

"I look at the proposed proceeding as a rash, reckless, and unauthorised attempt to establish, without a shilling of capital, a concern requiring an annual outlay of at least 15,000*l.*, the only hope of its success being in the amount of spoil to be acquired from the destruction of existing interests.

"I cannot refrain from adding, that it is lamentable to find in print, and to hear in conversation, the threat of 'annihilation,' and similar expressions used in regard to those authorised reporters who may not choose to submit to any terms attempted to be imposed upon them. It expresses, no doubt, what is intended; but it shews an ill will, an absence of the usual amenities which ordinarily regulate the intercourse between members of the bar, and a want of sensibility in inflicting serious loss and injury on members of the same profession.

"But my course is plain and decided. I have been an authorised reporter twenty-seven years, and have survived the attacks of six new sets of opposition reports; I have no fear of the seventh. The only authorised reports of the Rolls decisions will, therefore, be continued to be published as heretofore.

"I am, dear Sir, yours faithfully,  
C. BEAVAN.

"To James T. Hopwood, Esq."

In a letter acknowledging the receipt of the above Mr. Hopwood made the following remark:—

"The salary of 200*l.* a year, which you speak of so contemptuously, you must be aware is a caricature, and not a correct representation; what the council offered in your case would have been 800*l.* a year, 300*l.* guaranteed." (See clause 13 of the Bar Scheme).

For the conclusion of the correspondence we must refer the curious to the part of Mr. Beavan's Reports which has just appeared. He appends to it the following statement:—

"Three months later the author accidentally discovered, from a passage in the 'Law Times' of the 25th November, that the council had made some appeal to the judges. On inquiry, it appeared that Sir Fitzroy Kelly, as chairman of the council, had addressed a letter to the Master of the Rolls on the subject.

"The author has no copy of that letter, but he presumes that it was to the effect of the printed address of the council, which appeared in 'The Jurist' of the 11th November, 1865, the effect of which was substantially to deprive the author of his office. Of the propriety and taste of this course, behind the back of the author, the profession must judge.

"The secretary of the council, at the request of the Master of the Rolls, has this day furnished the author with a copy of his Honor's reply, which important document is as follows:—

"14, Hyde Park-terrace, W., Nov. 2, 1865.

"Sir,—In answer to your letter of yesterday, I have to express my deep regret that the council of law reporting have not been able to make any arrangement with Mr. Beavan respecting the reporting cases in the Rolls Court. It is now fourteen and a half years since, following the arrangement which I found had been adopted by Lord Langdale, I have supplied to Mr. Beavan copies of my written judgments, and have corrected the notes of those which are taken from my oral delivery, and I have done this, as Lord Langdale did, to the exclusion of every other applicant. I cannot abandon this arrangement unless with the consent of Mr. Beavan. As long as he requires to have the exclusive use of my written judgments,

and of my corrections of the notes of the judgments delivered by me orally, I consider myself bound to accede to his wishes. I say this in order that the gentlemen selected by the council of law reporting as reporters in the Rolls Court, whom I respect highly, and one of whom is a personal friend of mine, may not attribute to any want of courtesy on my part that course of conduct which I consider myself bound to adopt as a matter of justice to Mr. Beavan.

"I am, Sir,

"Your obedient servant,

(Signed) "JOHN BOMILLY.

"Sir Fitzroy Kelly, M.P., &c., &c."

Mr. Beavan's irritation seems to us unreasonable. There is nothing so sacred in himself, his court, or his reports, as to make competition a sin; and in seeking the alternative of his concurrence, the council could not do more than offer him the highest terms within their authority—terms, it may be, preferable to those which competition would bring him to. Nor, in applying to the judges, in pursuance of the express directions of a scheme familiar to every member of the bar, can it be said that the council have done anything behind that back which Mr. Beavan had so decidedly set up against them. But, as we have already pointed out, by exceeding their authority in launching the undertaking before they had obtained that support which would have justified and compelled the concurrence of all the regular reporters, by rejecting the reasonable demands of the authorised reporters, and by making an improvident bargain "behind the backs" of the booksellers, they have excited and justified an opposition, which it will require more prudence and fairness than they have yet exhibited to overcome.

It is to be regretted, that the views of the Master of the Rolls on the subject of reporting are so peculiar; but it is in some degree consolatory, that he does not attempt to give any reason for them.

## Reviews.

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*Legal Forms, compiled for the Use of Attorneys and Solicitors. By WILLIAM CHAMPAIN HALL, Attorney-at-Law. 12mo., pp. 188. [H. Coe.]*

*A Guide to the Law, for General Use. By EDWARD REYNOLDS, B.A., Oxon., of the Inner Temple, Barrister-at-Law. Post 8vo., pp. 182. [Stevens & Sons.]*

THERE is scarcely a subject which any one can expound with effect in an elementary or popular manner, unless he has first studied exhaustively both its principles and its details. The observation applies even to the mathematics; and he who attempts to improve upon the definitions and axioms in Euclid's first book will fail, if he has not previously enlarged and corrected his views by the study of the higher geometry. A writer on natural philosophy incurs the risk of too much generality in expounding the most familiar law of nature, unless he is well aware of the history of its

discovery, and the limits of the proofs by which it has been established; while in dealing with positive law, which is always more or less arbitrary, imperfect, and inconsistent, compendiousness and accuracy are almost incompatible. Knowing this, and knowing also a little of the quality of the handy-books which Dr. Smith has had the confidence to publish on more subjects than any one accomplished lawyer would profess to have mastered, we do not expect to find much utility or accuracy in his attempt to provide 200 forms of legal instruments, with introductions and notes, for the use of unprofessional persons, as well as of lawyers. By professing to give, in the compass of about 200 duodecimo pages, a collection of forms and instruction applicable to the multifarious subjects indicated in the title-page, and sufficient to replace in the lawyer's chambers the much larger and still imperfect collections now in use, and by proposing to enable unprofessional persons to draw articles of partnership, leases, conveyances, marriage settlements, wills, &c., Dr. Smith has betrayed his incapacity and temerity. We are not surprised, therefore, to find the following statement of the law as to bills of sale:—

"Bill of sale is the name given to a deed or instrument under seal, by which personal chattels are transferred without delivery, for the delivery of the deed does instead of the delivery of the chattel. Thus, if I put my hand and seal to a paper containing the words, 'I give all my furniture to C. D.,' this will pass the furniture to C. D. without my giving him possession. But though this would be good between C. D. and me, and he could claim the goods from me at any time, yet, if I kept possession of the goods and became bankrupt, or had an execution issued against my goods, C. D. could not claim the goods from my assignees, or from any creditor who obtained execution against my goods. To enable him, C. D., to maintain such a claim, an act passed in 1854, for preventing frauds upon creditors by secret bills of sale, requires him to file the bill of sale, &c." We are then told, that even after filing the bill of sale, the title of the purchaser may be defeated if the seller became bankrupt while he is in possession of the goods. Not a word of the effect of a valuable consideration in making a seal unnecessary to the validity of the transfer, or of the necessity of the delivery of possession in conformity with the terms of the transfer to protect the goods from being taken in execution by the creditors of the transferor. Accordingly, in the form of a bill of sale by way of mortgage, we have a transfer by an hotel keeper of all the goods and chattels in his hotel, without any provision that he shall retain possession until default in payment of the debt—thus leaving the goods subject to execution.

Under the head of "deposits of goods," we find this sentence:—"It is not necessary to be a licensed pawnbroker in order to take this sort of security for money due, nor unless money is actually advanced on the security." Dr. Smith does not seem to be aware of the exemption from the provisions of the Pawnbrokers Acts of loans at interest not exceeding 51. per cent.

Curious as the present condition of the law of partnership is, it is not quite so curious as it would be if the following statement were correct:—"When I have lent money to a man in trade, on the agreement that I am not to be concerned in the business, nor my name to appear, but I am to have a share in the profits, this does not make us partners between one another. It does not even make us partners to the world *till I have taken a share of the profits as such*, and then only during such time as I may do so (p. 50)." The italics are the doctor's. Such a law would be highly acceptable to speculators—exempting them from liability while the trade was carried on at a loss, and

rendering them liable only when the concern was so abundantly solvent as to yield a profit.

We know what kind of difficulties a man may get into who, without the advice of his lawyer, enters into a written contract to sell an estate. Dr. Smith gives him a form for the purpose—the only provision relative to title being the following:—"The conditions of sale shall be settled to meet the interests of both parties, at their joint expense, by Mr. E. F., of —, solicitor, or some counsel, to be consulted by him." To the purchaser he kindly recommends the use of those wonderful short forms, saying one thing and meaning another, which were given by the stat. 8 & 9 Vict. c. 118.

The following is the form of a marriage settlement, at p. 141:—"The sum of £—, 31. per cent. Consolidated Bank Annuities, and the lease of —, shall be vested in trustees, upon trust, &c." No intimation being given as to the source from which the Consols are to be derived. Dr. Smith prudently omits to append to each form a statement of the stamp duty chargeable upon the instrument. But he has a chapter on stamps, and on turning to it to ascertain the stamp on the settlement we have just looked at, we find a statement that settlements, or agreements for settlement of any property, *whether real or personal*, are liable to a duty of 5s. per 100*l.* on the value of the property. In the same article we are told, that in criminal cases all documents are admissible without a stamp; and this is illustrated in another place by the case of a person who has received money, against whose oath, denying the receipt, his letter acknowledging the receipt, but unstamped, would not be admissible, "but the witness may be subsequently charged with perjury, and then the letter, which is an unstamped receipt, may be given in evidence against him." Evidently Dr. Smith has not read the case of *Rex v. Hall* (3 Stark. 67).

Mr. Hall's book has been compiled with less ambition, and more capacity. But we cannot see the utility to a solicitor, who must necessarily possess Chitty's Archbold, and some collection of conveyancing forms, of a little book containing only a few forms of process, and a few precedents of leases, mortgages, conveyances, and other common instruments.

Mr. Reynold's Guide to the Law is a little dictionary or encyclopædia of definitions and explanations of legal terms, principles and rules, under heads alphabetically arranged. We gather from the author's Preface, his opinion that the book contains "a vast amount of general legal information," and must be most welcome and useful to the laity, and also to legal students and practitioners. To lawyers, we conceive it can be of little use, because it has no reference to authorities, or even to acts of Parliament; but to those unprofessional persons who seek legal information, without desiring to act as their own lawyers, it may be safely recommended as a convenient book of reference. It has been carefully compiled, and clearly written, and appears to be generally accurate. The statement, however, under the title "copyright," that "a foreigner residing abroad is entitled to the copyright of any work composed and first published by him in this country," however well founded on principle, is not supported by any authority, and is not likely to be established, in opposition to the well-known case of *Jeffreys v. Boosey*—a decision on the repealed Copyright Acts.

## FRIENDLY SOCIETIES.

*Suggestions for the Establishment of Friendly Societies, on Sound Principles. By John Tidd Pratt, Esq., the Registrar of Friendly Societies in England.*

THE object of the following instructions is to promote the general welfare of the working classes, by enabling them to make provision, upon sound principles, against the natural evils and exigencies of sickness, old age, and death, and to act on those principles of mutual assurance and support which are now so generally adopted by the more opulent members of society, and to guard them against the many plausible but ruinous schemes by which they are too often deceived.

In a society founded on the following tables, it is as certain, as it is possible to be, that the benefits subscribed for by the members will be received by them. The sickness tables cease at sixty, sixty-five, or seventy years of age, up to which period the data upon which they are founded are well tested. The annuities, or old age pay, commencing at sixty, sixty-five, or seventy, and the sums payable at death, will be guaranteed by the Government. No further certainty in these respects is attainable.

Every member should be at liberty to subscribe to one or all of the objects, according to his ability or inclination, with the exception, that persons insuring against sickness must also insure for medical attendance as long as they reside within the limits of the society; and females, as well as males, may subscribe for any of the benefits, except relief in sickness.

At page 8, &c., will be found examples from the tables from which persons may select such benefits as they may think fit to subscribe for.

All money received for sick pay, endowments, and expenses of management should be invested in a savings bank, on Government security, or on the securities authorised by the Friendly Society Act.

The management of the society should be vested in a committee, consisting of honorary and benefit members, or of benefit members only; and there should be trustees, a treasurer, visitors, secretary, and auditors.

The accounts should be kept so as to shew the contributions paid to, and benefits paid out of, the fund subscribed for each particular insurance, as well as for expenses of management.

The society should be self-supporting, for which purpose each member should be required to pay a small sum per month for the expenses of management, and the place of meeting should, if possible, be at some public institution or school-room. If that cannot be obtained, and there is no other place except an inn or a public-house, a certain fixed payment should be made for the use of the room, lights, and fire, with a stipulation that no beer, &c. should be brought into the room until all business is concluded, when each member should pay for any refreshment he may require. When an anniversary or annual feast is held, the contribution thereto, and attendance thereat, should be voluntary, though there seems no objection to a rule, that every member, who lives within a given distance, should have a ticket sent him, which, if not returned at a certain time, say a week before the day of the feast, he should be required to pay for.

In a society formed on these principles, every member will have to pay only such contributions as may be required by the rules and tables for the benefits he wishes to receive, and there will be no compulsory charges for beer, feasts, useless paraphernalia, or other extras.

The benefits assured to male members should be,—

1st. Medical attendance.

2nd. Weekly allowance in sickness until sixty, sixty-five, or seventy.

A small monthly payment must be made to defray the necessary expenses of management.

Immediate annuities or deferred annuities, from 1*l.* to 50*l.* per annum, commencing at sixty, sixty-five, or seventy, and sums payable at death from 20*l.* to 100*l.*, may be secured as hereafter mentioned.

Care should be taken to admit as members insuring against sickness such persons only as are of good health and good moral character, and certificates to that effect should be produced before a person is admitted a member.

No entrance fees should be required, nor should any fines be incurred for non-attendance, or not serving office, except that of visitor.

The tables for relief in sickness have been approved by experienced actuaries, and the premiums required are the lowest compatible with safety to the insured. Each member will pay according to his age at the time of admission, and will, therefore, bear his own burthen, so that the young will not have to pay for the increased risk of the aged.

The accounts should be kept in such a way, as to enable the annual statement to be made out in the manner directed by the registrar, pursuant to the 18 & 19 Vict. c. 63, and should be audited quarterly by persons not members of the society.

*Medical Attendance.*

The contribution for medical attendance, as agreed with the medical practitioner (which is generally 4*s.* per annum, or 4*d.* a month), should be paid when the member is admitted, quarterly in advance. This benefit is claimable from the time of admission.

*Sickness Benefit.*

Every industrious and provident person should, immediately he begins to seek a livelihood, insure against sickness.

Savings' banks afford no provision against sickness; for suppose a man to have saved 1*s.* per week for one year, and then to be assailed by accident or ill health, he will, at the rate of 10*s.* per week, consume his savings in little more than a month.

On the other hand, a member entering a society between the ages of sixteen and twenty-three, may, by a payment of 1*s.* per month only, secure to himself an allowance in sickness of 10*s.* per week, according to the rules and tables.

The society's allowances in sickness are assured, subject to its rules and tables. Allowances of 10*s.*, 15*s.*, or 20*s.* per week may be assured for, the rates of payment for which are equitably adjusted according to the age of each member on admission; and the period to which the benefits are insured for—until sixty, sixty-five, or seventy years age, but should in no case exceed two-thirds of what he can earn in good health, and no member should be allowed to belong at the same time to another society for the same benefits.

Male members can only be admitted to insure in this fund between the ages of sixteen and forty. Members free six (or twelve) months after admission. Every member insuring for sick pay must also insure for medical attendance.

The payments in case of sickness to be made in full for twenty-six successive weeks; half the amount for the next twenty-six weeks; and if the sickness shall continue, the member shall be reduced to quarter pay; and when any member has had full pay for a less period than twenty-six weeks, or half pay for a less period than twenty-six weeks, he shall not be allowed to begin his full or half pay over again on the renewal

of sickness until he shall have ceased to receive any pay whatever on account of sickness for six calendar months, and returned to his usual employment, or some other by which he shall gain a livelihood; but if he fall ill within that time, he shall be placed in the same situation as when he ceased to receive any relief, and shall receive such relief, and no other, as he would have received had no cessation of his sickness occurred.

Table of Monthly Contributions for a Weekly Allowance of 10s. in Sickness to Males, the Monthly Contributions and Benefit ceasing at 60, 65, or 70 Years of Age.

Age.	60	65	70
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
16 and not exceeding 23	1 0	1 1	1 2
24 " "	1 1	1 2½	1 3½
31 " "	1 2	1 3½	1 5
35 " "	1 3	1 5	1 6½
39 " "	1 4	1 5½	1 7½

Table of Monthly Contributions for a Weekly Allowance of 10s. in Sickness to Persons of the Occupations under mentioned, the Monthly Contribution and Benefit ceasing in each case at the Age of 65 Years.

Age.	Mariners.	Painters.	Railway Servants.	Miners and Colliers.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
23	1 2½	1 3½	1 3½	1 7½
30	1 5	1 6	1 4½	1 10
34	1 6½	1 8½	1 5½	2 0
38	1 8½	1 11	1 6½	2 2
40	1 9½	2 0½	1 7½	2 3½

#### *Expenses of Management of the Society.*

A payment of 2d. per month, in advance, is required from each member.

#### *Accounts.*

A separate book, a clear and distinct debtor and creditor account, and a separate fund should be kept for each benefit. The books, receipts, investments, and accounts of every kind, ought to be thoroughly examined, by some competent disinterested person, once a quarter. Instructions in book-keeping for Friendly Societies may be had on application to the registrar.

#### *Annuities and Sums payable at Death.*

The Postmaster General is empowered, under the act 27 & 28 Vict. c. 43, to insure the lives of persons of either sex, between the ages of sixteen and sixty, for not less than 20l. or more than 100l. He is also empowered under the same act to grant immediate or deferred annuities of not more than 50l. on the lives of persons of either sex, and of the age of ten years and upwards. The persons whose lives are insured, or to whom annuities are granted, by the Postmaster-General, have direct Government security for the payment of the money at the proper time.

Certain post-offices (the names of which may be obtained at any post-office) have been opened for the receipt of proposals for the insurance of lives and the purchase of annuities, and forms of proposal, with full instructions for filling up and delivering these forms, may be obtained at these post-offices.

Tables of the premiums to be charged for the insurance of lives; for the grant of immediate annuities; for the grant of deferred annuities, or deferred monthly allowances, without return of purchase money;

and for the grant of deferred annuities, or deferred monthly allowances, with return of purchase money, have been printed, and may be seen at the post-offices which have been opened for the receipt of proposals. These tables may also be obtained of Messrs. Eyre & Spottiswoode, London. The price of the tables for the insurance of lives and the grant of annuities without return of purchase money is 3½d. The price of the tables for the grant of annuities with return of purchase money is 2d. If sent by post, 5d. is charged in the one case, and 3d. in the other.

(To be continued).

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## NOTICE.

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# THE JURIST.

LONDON, DECEMBER 23, 1865.

In continuation of the subject treated of in our last number, and proceeding from goods to passengers, and the degree of protection extended to the latter, we would just observe, that carriers of passengers for hire are subject at common law to the same responsibility as carriers of goods, so far as regards the passengers' luggage; but this must be ordinary luggage, articles of personal convenience and use, and not merchandise or valuables, although carried in a trunk. Carriers of passengers are not common carriers (see *Bac. Ab., A.*), i. e. they are not under the same liabilities at common law as carriers of goods: they are not insurers. They are not responsible for mere accidents happening to the persons of passengers without any default on the carriers' part, but they are bound to carry passengers upon their tendering their fare, provided there be room in the conveyance; and having received them, they are bound to carry them safely, as far as human care and foresight will go, and use due care and diligence to carry them without delay. It would seem to be doubtful as to whether a carrier of passengers absolutely warrants that the conveyance is sufficiently secure to undertake a journey. This state of things, where there is no special contract between the carrier and the passenger, is equally applicable to railway companies as to other carriers, as, practically, passenger traffic is unaffected by the Carriers or the Traffic Act, except as to their being obliged to afford facilities for receiving and forwarding traffic.

The liability of railway companies, therefore, as to the conveyance of passengers, stands simply on the common law, and the duties to be implied by law from their undertaking to carry and convey, capable, however, of being modified by special conditions, that may be stipulated for on a special contract with the passenger; and, inasmuch as with regard to goods prior to the Traffic Act, it was held, that a common carrier of goods might lawfully make a special contract with the sender of them, by which they might relieve themselves from all responsibility—all liability for losses from whatever cause arising (*Carr v. The Lancashire and Yorkshire Railway Company*, 17 Jur. 397)—it would seem that, a fortiori, they may in a similar way (i. e. by special contract) exempt themselves from the obligations the law implies from the ordinary contract to carry and convey a passenger. Now, in the case of *Hurst v. The Great Western Railway Company* (19 C. B. 311), which was a case in which the plaintiff sought to recover compensation for delay and detention on a journey, it was held, that the contract was contained in the time bill, and that, as that was not put in, it was not shewn what the contract was; but, further, the judges held, that if it had been put in, it would have put the plaintiff out of Court, as there was a stipulation at the bottom of the time bill, that the company would do their best to assure the arrival of the trains, but would not be responsible for their non-

arrival. It would seem that upon such a condition it would still be open to a passenger to sue a company for negligence in not taking due care to procure the punctual arrival of a train; but then comes the question, how is the negligence to be proved? There would seem to be much good sense in Lord Denman's observations on this subject in *Carpue v. The London and Brighton Railway Company* (5 Q. B. 751; 8 Jur. 464):—"It having been shewn that the exclusive management both of the machinery and the railway was in the hands of the defendants, it was presumable that the accident arose from their want of care, unless they gave some explanation of the cause by which it was produced, which explanation the plaintiff, not having the same means of knowledge, could not reasonably be expected to give." We do not think that the law is quite accurately stated in *Hodges on Railways*, p. 531, who says, "Although in one case it was ruled otherwise by Lord Denman, it seems now clearly established, that in order to render the company liable for negligence, it is necessary to give affirmative proof of negligence on their part, and it is not sufficient merely to prove the occurrence of an accident, and rely upon that as *prima facie* evidence of negligence." It is true, that the two next passages rather tend to qualify this, but we think that Lord Denman's judgment was not only good sense, but good law. No general rule can be laid down one way or the other, that the mere happening of an accident is or is not *prima facie* evidence of negligence. It depends entirely upon the nature and character of the accident. Of course, in most cases, there must be some affirmative proof of negligence, and the mere happening of the accident may not be *prima facie* evidence; but, on the other hand, it may be *prima facie* evidence where it happens under such conditions, that unless the company are able to satisfactorily explain it, negligence on their part may be fairly presumed against them; whether it is called affirmative evidence or *prima facie* evidence of negligence, matters little. There is the absence of any direct evidence as to the actual cause of the accident, and from the mere happening of the accident under the circumstances that occur, negligence is presumed to have been the cause. In the case of a collision of two trains belonging to the same railway company, there can be no doubt that the fact of the collision mentioned would be reasonable evidence of negligence on the part of the defendants; and for the same reason, there should be no doubt, that if a train, which is entirely under the control of a company, should be some hours late, the mere fact of its being some hours behind its time would, unexplained, be reasonable evidence of negligence in an action against the company—evidence of their not having taken reasonable care to insure the due arrival of the train. In a late case in the Exchequer Chamber (*Scott v. The London Dock Company*, 3 H. & C. 599, affirming the judgment of the Court of Exchequer), the rule is laid down, "that when the thing causing the accident is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen, if those who

have the management use proper care, it affords reasonable evidence; in the absence of explanation by the defendants, that the accident arose from want of care," and we think; that if a time bill merely says that the company does not guarantee the punctual arrival of a train; still that if, in point of fact, a train arrived some hours late, that would be sufficient *prima facie* evidence of negligence to support a declaration for negligence, and that it would be for the company to shew that the delay arose from no default of theirs. Still the public would be left without any real protection, as the companies would only have to put in their time bills that they would not be responsible for the delay of the trains, however caused, and then, no matter what the negligence was, the passenger would have no remedy. In one respect *Hurst v. The Great Western Railway Company* seems to have gone further than any of the cases. The old cases as to goods shewed that a carrier's notice, to be effective, must be brought home to the mind of the sender, but none of them furnish any authority for saying that a man who reads a time table, to see what time a train starts must be taken to have read all the little notes printed on the bills, and to have specially contracted on those terms. And as the law now stands, we do not see what is to prevent a railway company from giving notice on their tickets and bills that they will not be responsible for any accident to a passenger, however caused, and so entirely to evade all responsibility for his personal safety, and, even in case of his death, leaving his family without any redress. Lord Campbell's Act makes the right of action in the passenger, if he had survived, the test of the right of action where death results; enacting, "that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of a person injured, although the death shall have been caused under such circumstances as amount in law to felony." This gives no new right; and with regard to felony, it only removes a technical objection to the civil remedy, in case the act complained of amounts to felony. But a company, as a company, is only liable for civil injuries, and as to such the public is left entirely at the mercy of the railway companies, who may make their own terms, and that too in the easiest possible manner, by any little note on a ticket or bill; and, if they choose, exonerate themselves from any, even the grossest, negligence on the part of their servants, and leave the passenger to take his chance of even mortal injuries without any redress, either for himself or his family.

In conclusion, hoping that Parliament may soon enact, that no railway company shall impose conditions upon passengers that may not appear to the court or a judge reasonable, we beg leave to cite a few observations from a very elaborate American judgment in *Cole v. Godwin* (19 Wendell, 281):—"There are no principles in the law better settled,

than that whatever has an obvious tendency to encourage guilty negligence, fraud, or crime, is contrary to public policy. Such, in the very nature of things, is the consequence of allowing the common carrier to throw off, or in any way restrict, his legal liability. The traveller and bailor is under a sort of moral duress—a necessity of employing the common carrier under those legal arrangements which allow any number of persons to assume that character, and then discourage and supersede other modes of conveyance. My conclusion is, that he shall not be allowed in any form to higgie with his customer, and extort one exception and another, not even by express promise or special acceptance, any more than by notice. He shall not be privileged to make himself a common carrier for his own benefit, and a mandatory or less to his employer. He is a public servant, with certain duties defined by law, and he is bound to perform those duties."

### THE READERSHIP OF CONSTITUTIONAL LAW.

It is high time that the history of the late appointment of a Reader of Constitutional Law were completed. It cannot be completed without an inquiry, and with a view to that inquiry, we will recapitulate what has become known beyond the walls of the council chamber. When Mr. Maine resigned the chair of jurisprudence and civil law, Mr. Sanders, having edited the *Institutes*, offered himself as a tolerably square man for a square niche, and his candidature was, we believe, warmly supported by Mr. Bailly, a most active member of the Council of Legal Education. He failed, and it is not now material to inquire whether the council's choice fell upon a round man. The death of Mr. Phillimore left a vacancy in another readership—that of constitutional law—for which Mr. Sanders had not shewn any fitness. He was thrust into it—to console him, it may be, for his former disappointment. No one could have complained of the transaction, if it had been a purely private arrangement or job. But the appointment was to an important public office, for which there were several candidates, and the public were entitled to have the best man appointed, and each candidate was entitled to have his pretensions fairly considered and adjudicated upon. When the result of the election was announced, we observed in these columns (*ante*, p. 265), that the council had chosen a candidate who had given no public evidence of fitness, and we contrasted his claims with those of Mr. Homersham Cox, the author of "*The Institutions of the English Government*," and observed, that the latter, while certainly as well qualified as Mr. Sanders in general attainments, character, and experience in academic tuition, "had also established his claim to this particular appointment, by long and laborious study of English constitutional law and legal history." We have since published a correspondence between Mr. Cox, Lord Westbury, the chairman of the council, and Mr. Bailly, which throws some light on the conduct of the election

(ante, p. 417). It appears that Mr. Cox intrusted certain valuable testimonials to Mr. Baily at his own express request; that for some unexplained reason the latter, instead of distinctly bringing them to the notice of the council, retained them in his own possession until the election was over, and then, when they had become useless, returned them to the owner.

We have refrained from speculating on the motives which prompted this conduct, but it manifestly involved a breach of duty towards the council, and a breach of confidence towards Mr. Cox. It was Mr. Baily's duty to make the council aware of the existence of the important documents which had been intrusted to him for that purpose. It was principally by his instrumentality that the election was determined, and his influence outweighed that of Lord Westbury, who, in a letter which we have published, states that he supported Mr. Cox's candidature, and openly avows regret at the result of the election. Mr. Cox's claims were actively opposed by Mr. Baily, and it was, therefore, the more incumbent on him to fulfil the trust which he had solicited and accepted, whether he had or had not an honest conviction that Mr. Sanders was better qualified than any other man to fill any readership, on any subject, that might be vacant. It is possible that the testimonials of the rival candidate were laid aside simply from a belief that it was unnecessary to distract the attention or perplex the judgment of the council by superfluous reference to conflicting claims. But if this was Mr. Baily's view, it is to be regretted that he did not impart it to Mr. Cox in time to allow him to seek other means of presenting his testimonials.

Although Mr. Baily thinks it inexpedient to throw a light on these transactions, the Council of Legal Education cannot, without peril to its own reputation, suffer them to remain unexplained. The result has been, we are bound to say, without intending any disrespect to the successful candidate, that the appointment has failed to gain that general approbation and confidence on which the influence of a professor's teaching in great measure depends. Constitutional law is a very special study; it demands familiarity with state trials, parliamentary precedents, state papers, legal antiquities, and ancient treatises which are not within any ordinary course of reading. The "Institutions of the English Government" could not have been produced by any one who was not deeply versed in that learning; whereas there is nothing—absolutely nothing, before the world to shew that the present reader had paid the slightest attention to it prior to his appointment. We regret to observe, that, with very few exceptions, the chairs of legal education, unlike the professorships in the universities, have been assigned to gentlemen who have not acquired a reputation for profound and mature knowledge of the subjects they profess to teach. One of the immediate effects of appointment upon other grounds than personal merit is, that the standard of legal education is seriously lowered; another is, that the students have little confidence in their teachers, and despise their instructions; a third, still more disastrous consequence, is, that a suspicion of favouritism is engendered, not merely with respect to

the appointments by the council, but also with respect to the scholarships and other rewards at its disposal. We think that no apology is required for reverting to the very painful circumstances attending the late appointment; for unless the council can maintain an unblemished reputation for impartiality, and, we must add, can raise the character of its chairs far above the present average, the sooner it ceases to preside over legal education the better.

## REGULÆ GENERALES.

### PAYMENT OF COMMON-LAW FEES BY STAMPS.— 28 VICT. C. 45.

*Michaelmas Vacation, 1865.*

WHEREAS by an act passed in the session of Parliament held in the 28 Vict. c. 45, intituled "An Act to provide for the Collection by means of Stamps of Fees payable in the Superior Courts of Law at Westminster, and in the Offices belonging thereto," it is provided, by the 3rd section thereof, that the Commissioners of her Majesty's Treasury, with the concurrence of the Lord Chief Justices and of the Lord Chief Baron, may from time to time make such rules as seem fit for regulating the use of the stamps under this act, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of adhesive stamps, and keeping account of such stamps: now we, being two of the Lords Commissioners of her Majesty's Treasury, with the concurrence of the Lord Chief Justices and of the Lord Chief Baron, do hereby order and direct that the following rules be observed in respect to stamps used in the superior courts of common law, and in the several offices connected therewith; the Crown Office, Queen's Bench; the office of registration of certificates, &c., of acknowledgments of deeds of married women, Court of Common Pleas; the office of registrar of judgments, &c., Common Pleas; the Queen's Bench Remembrancer's Office, Court of Exchequer; and in the judges' chambers; to take effect on and after the 1st January, 1866:—

1. The stamps to be used for collecting the fees payable in the several offices in the courts of common law at Westminster, and in the judges' chambers, by virtue of the above act, shall, subject to the provisions of the seventh and eighth of these rules, be stamped or affixed, at the expense of the parties liable to pay such fees, on or to the vellum, parchment, or paper on which the proceedings, in respect whereof such fees are payable, are written or printed, or which may be otherwise used in reference to such proceedings.

2. Where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office of the said courts, or at the judges' chambers, and it shall not have been customary to use any written or printed document or paper in reference to such matter or thing whereon the stamp could be stamped or affixed, the party or his attorney requiring such matter or thing to be done, or permitted to be done, shall make application for the same by a præcipe or short note in writing or print, and a stamp denoting the amount of the fee so payable shall be stamped or affixed to such præcipe or note.

3. All adhesive stamps affixed to any paper or document presented to or kept in the possession of any of the officers of the said courts, or of the clerks to the judges, shall, before the act is done or permitted to be done, in respect of which the fee denoted by such stamp is payable, be effectually cancelled by some

officer of the said courts, or by one of the said clerks to the judges, by obliterating the same by means of a hand stamp and printing ink, shewing the date of the cancellation, and no such document shall be filed or delivered out until the stamp thereon shall have been cancelled or defaced in manner aforesaid.

4. That when any summons, order, or other document, has been issued by mistake, and the stamp thereon has been cancelled without having been legitimately used, the Master, associate, or other proper officer of the department to which the fee is payable, or the judge's clerk, shall certify that such stamps are fit subjects for allowance, and it shall be competent to the Board of Inland Revenue, upon the presentation of such certificate, to allow the amount thereof.

5. That distributors of stamps, and all persons licensed to sell stamps in England and Wales, shall be permitted to sell the stamps above referred to; and that an office be provided in, or attached to, the judges' chambers for the sale of stamps.

6. The several officers of the said courts, and the clerks to the several judges, shall, on or before the 30th April in each year, make out an account of all stamps cancelled in their respective offices, specifying the number of each denomination, and shall render such account to the Lords Commissioners of her Majesty's Treasury; and the first of such accounts shall be for the three months ended the 31st March, 1866, and the second of such accounts for the year ended the 31st March, 1867, and so forth.

7. And we do hereby order and direct, that the stamps to be used for collecting the fees payable in the offices of the several Masters of the courts of common law, shall be stamped or affixed at the expense of the parties liable to pay such fees on the several documents mentioned in the second column of the subjoined table:—

<i>Fees taken in the Offices of the Masters of the Courts of Queen's Bench, Common Pleas, and Exchequer, in respect of</i>		<i>Stamps to be affixed upon</i>
Every writ .. .. .	.. ..	Præcipe.
Every appearance .. ..	.. ..	Appearance piece, which shall be of linen paper of the same size and shape as the parchment appearance pieces heretofore used.
Filing every document .. ..	.. ..	Document filed.
Amending any proceeding .. ..	.. ..	Order to amend.
Every rule .. .. .	.. ..	Rule.
Every judgment .. .. .	.. ..	Entry in Masters' book.
Taxing bill of costs .. ..	.. ..	Bill taxed.
Reference to, or examinations by, Masters .. .. .	.. ..	Certificate, examination, or report.
Payment of money into court .. ..	.. ..	Entry in Masters' book.
Every certificate .. .. .	.. ..	Certificate.
Office copies of documents .. ..	.. ..	Office copy.
Searches .. .. .	.. ..	Præcipe or note filed.
Every affidavit or affirmation .. ..	.. ..	Affidavit, &c.
Allowance and justification of bail, taking special bail as commissioners .. .. .	.. ..	Bail piece.
Filing affidavit and inrolling articles of clerkship .. .. .	.. ..	Entry in Masters' book.
Every re-admission of an attorney .. ..	.. ..	Rule for re-admission.

8. And we do further order and direct, that a book or books be kept in the offices of the associates of the Courts of Queen's Bench, Common Pleas, and Exchequer, in which book or books shall be entered the names of the several causes, against which shall be placed adhesive stamps of the value required during the different stages; and it shall be the duty of the associate, or of such one of his clerks as he shall direct

to do it, to cancel such stamps in the manner herein-before provided, immediately after they are placed in such books.

Given under our hands at the Treasury Chambers, Whitehall, this 15th day of December, 1865.

RUSSELL.

E. H. KNATCHBULL-HUGESSEN.

We do hereby signify our concurrence in the before-mentioned rules and regulations:—

A. E. COCKBURN,

Lord Chief Justice of the Court of Queen's Bench.

W. ERLE,

Lord Chief Justice of the Court of Common Pleas.

FRED. POLLOCK,

Lord Chief Baron of the Court of Exchequer.

16th December, 1865.

### Court Papers.

#### EQUITY SITTINGS, HILARY TERM, 1866.

*Before the LORD CHANCELLOR.*

*At Lincoln's Inn.*

Thursday .. Jan. 11	Appeal Motions and Appeals.
Friday .....	12 Petitions and Appeals.
Saturday .....	13
Monday .....	15 } Appeals.
Tuesday .....	16
Wednesday ....	17 Appeals in Bankruptcy and Appeals.
Thursday .....	18 Appeal Motions and Appeals.
Friday .....	19
Saturday .....	20 } Appeals.
Monday .....	22
Tuesday .....	23
Wednesday ....	24 Appeals in Bankruptcy and Appeals.
Thursday .....	25 Appeal Motions and Appeals.
Friday .....	26
Saturday .....	27 } Appeals.
Monday .....	29
Tuesday .....	30 Petitions and Appeals.
Wednesday ....	31 Appeal Motions and Appeals.

*Before the LORDS JUSTICES.*

*At Lincoln's Inn.*

Thursday .. Jan. 11	Appeal Motions and Appeals.
Friday .....	12 } Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	13
Monday .....	15 } Appeals.
Tuesday .....	16
Wednesday ....	17
Thursday .....	18 Appeal Motions and Appeals.
Friday .....	19 } Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	20 } Appeals.
Monday .....	22
Tuesday .....	23 } Appeals from the County Palatine of Lancaster and Appeals.
Wednesday ....	24 Appeals.
Thursday .....	25 Appeal Motions and Appeals.
Friday .....	26 } Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday .....	27
Monday .....	29 } Appeals.
Tuesday .....	30
Wednesday ....	31 Appeal Motions and Appeals.

*Notice.*—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.**At Chancery-lane.*

Thursday .. Jan. 11	Motions and General Paper.
Friday .....	General Paper.
Saturday .....	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
Wednesday .....	General Paper.
Thursday .....	Motions and General Paper.
Friday .....	General Paper.
Saturday .....	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
Wednesday .....	General Paper.
Thursday .....	Motions and General Paper.
Friday .....	General Paper.
Saturday .....	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
Wednesday .....	Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.**At Lincoln's Inn.*

Thursday .. Jan. 11	Motions, Adjourned Summonses, and General Paper.
Friday .....	Petitions, Adjourned Summonses, and General Paper.
Saturday .....	Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
Wednesday .....	General Paper.
Thursday .....	Motions, Adjourned Summonses, and General Paper.
Friday .....	Petitions, Adjourned Summonses, and General Paper.
Saturday .....	Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
Wednesday .....	General Paper.
Thursday .....	Motions, Adjourned Summonses, and General Paper.
Friday .....	Petitions, Adjourned Summonses, and General Paper.
Saturday .....	Short Causes, Adjourned Summonses, and General Paper.
Monday .....	General Paper.
Tuesday .....	General Paper.
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Thursday .....	Motions and Causes.
Friday .....	Petitions and Causes.
Saturday .....	Short Causes and Causes.

Monday .....	23	} Causes.
Tuesday .....	23	
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Thursday .....	25	Motions and Causes.
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**COUNTY COURTS EQUITABLE JURISDICTION**, or the New Act, 28 & 29 Vict. c. 99, conferring further Equitable Jurisdiction on the County Courts. With Notes. By JAMES J. ASTON, Esq., Barrister at Law.

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## THE JURIST.

LONDON, DECEMBER 30, 1865.

THE present staff of county court judges, consisting mainly of lawyers trained exclusively in the practice of the common law, with a sprinkling of equity barristers, and having before the 1st October, 1865, a jurisdiction carefully limited (with a few trifling exceptions) to claims enforceable at law, either for debt or damage not exceeding 50*l.*, or for recovering possession of tenements not exceeding 50*l.* in annual value, upon an undisputed title, have not given satisfaction; or rather, we should say, have occasioned great dissatisfaction. Yet many of the appointments have been given to the best men that could be expected to accept them, and the business has been of a simple and familiar character. The principal reasons of the failure of the system were explained, more than ten years ago, in that part of the Report of the County Court Commission in which the commissioners compared the procedure in the superior courts with that of the county courts. "In the former, the means adopted for separating questions of law from those of fact, the exertions of skilled advocates accustomed to practise in the central tribunals of the country, the attendance of a learned and enlightened bar, in whose presence each judge is required to fulfil the functions of his office, the facility for reviewing the opinion and direction, and for appealing from the decision of the full court, are calculated to insure the satisfactory administration of justice. On the other hand, considerable delay and expense necessarily result from bringing the machinery of those courts into full activity. In the county courts, the absence of any pre-appointed means of separating questions of law from those of fact, the non-employment generally of legal advocates, the non-attendance of a bar, the rapidity of the proceedings, and the power of the judge finally to decide on all questions of law and fact, except where the claim exceeds 20*l.*, render the judgment of the court less secure against miscarriage. On the other hand, the county court is near to the residence of the suitors, and the proceedings are simple, cheap, speedy, and final."

The Commissioners add:—

"In claims of considerable amount, we are of opinion that the inconveniences incident to the administration of justice in the superior courts are counterbalanced by the greater certainty in the application of the rules of law than can be expected in a tribunal so constituted as the county court. In claims of small amount, we think that the evils caused by an occasional miscarriage are more than counterbalanced by the advantages presented by a local tribunal, the proceedings of which are simple, cheap, speedy, and final. It may, perhaps, be difficult satisfactorily to define the word 'small,' as it is a word of relation; but we think it may be conveniently treated, for the purposes of jurisdiction, as embracing claims not exceeding 20*l.* With regard to claims exceeding 20*l.*, but not exceed-

ing 50*l.* in amount, we think the jurisdiction should remain concurrent as at present, but that such claims should be subject to removal by the defendant, on certain conditions hereafter specified; and we are of opinion that claims of a greater amount, or such as involve questions otherwise excluded from the jurisdiction, should be decided by the county courts only where consent has been given for that purpose by both parties, or a superior tribunal has directed the matter to be disposed of in the county court."—(First Report of Commissioners, the 31st March, 1855).

The names appended to the Report are—"John Romilly, William Erle, Charles Crompton, Henry Fitzroy, Henry S. Keating, John Herbert Koe, A. S. Dowling, J. Pitt Taylor, and J. R. Mullings."

After the above necessarily reserved criticism of the county courts, we may cite some more free—but, we think, scarcely too free—remarks from a correspondent, which appeared in our columns in the year 1854. After condemning the practice of giving judgment for weekly payments almost as a matter of course, our correspondent proceeds thus:—

"What I have said in qualification of your praise of the convenience of these tribunals will also tell against the attribute of expedition. I believe it is well known that they are not always exemplary on the score of cheapness; but I will pass that, and come to the important question of their efficiency. And, first, of the flagrant cases of prejudice and corruption which must have occurred to the observation of all who have had much experience in a variety of the courts. I do not at present refer to any case of pecuniary corruption, but to cases of prandial, choreal, comitial, ecclesiastical, and such like interests or predilections. That the *spes coenaticæ* often suffices to disturb the balance of justice in the hands of a man supposed to possess an educated soul (not to mention his income, for non constat that it is not more than effaced by his outgoings), is a sad truth, which it is of no use to ignore. Then there are the opinions which, in a country district, every man who is not a hermit forms as to the character, habits, and means of most of the people about him, including the labourers—opinions picked up for the most part in the college of Rumour. Add all those sources of prejudice suggested by Scott's story of the defeated chess-player, who ultimately enjoyed the satisfaction of check-mating his opponent by condemning him to death from the judgment-seat. The remedy is obviously that which you suggest. No judge must administer justice in the district where he permanently resides, unless he be a notorious hermit, i. e., live in London. The judges must be itinerant over every part of the country except their own neighbourhood."

The complaints as to the average or exceptional characters of the county court judges which were just ten years ago, will be equally just ten or a hundred years hence, if the system of localising the judges is continued. The offices are scarcely worth the acceptance of men fit to be appointed, and public opinion cannot be efficiently brought to bear upon the choice or the conduct of judges who are scattered over the country—for the most part buried

in rural districts, unwatched by any bar, safe from the criticism of any influential press. A few respectable nominations to the main foci of manufactures and commerce, will always be sufficient to cover a multitude of sins in other places; and it will be well if all even of those cloaks are kept tolerably decent.

The disadvantages of the superior courts, in respect of small claims are, according to the Commissioners, delay and expense; those of the county courts are the want of a system of pleading sufficient to separate questions of fact from questions of law, the non-employment generally of legal advocates, and the consequent non-attendance of a bar, the rapidity, and, in cases not exceeding 20*l.*, the finality of the proceedings—tending to miscarriage. The advantages being the same simplicity, rapidity, and finality of the proceedings, from another point of view, and the propinquity of the court to the residence of the suitors.

In cases not exceeding 20*l.*, the Commissioners thought, that the rough and ready way of the county courts was preferable. It may be so. But it can easily be shewn, that economy and dispatch, greater than the county courts afford, can be reconciled with the superintendence of judges equal in ability and dignity to those of the superior courts, while, with respect to causes of greater magnitude, and above all, with respect to the new equitable jurisdiction to the extent of 500*l.*, to be administered by men, who, for the most part, do not know the difference between tacking and foreclosing, it is certain that the county courts are, and under anything like the present system, always will be, with rare exceptions, utterly inefficient. But, in this, as in other matters, the mischief done by Lord Wesbury's rash and clumsy interference, may not be without compensation.

The county courts have been growing in public disfavour, and the last enormous extension of their jurisdiction will speedily bring the discontent to a head. We may then hope for a revision of the system of local jurisdiction, and for sounder views and safer measures with respect to the functions of courts of law and equity.

There can be no doubt that the existing distinction between legal and equitable rights and remedies, and the courts in which they can respectively be enforced, are in many particulars unsatisfactory. It is, however, far from true, that there is in no case any reason or convenience in the separation of equitable from legal rights, or in the option which is now given between a legal and an equitable remedy. That there is a real and not a merely technical importance in the separation which our laws permit of the legal from the equitable ownership of property, is proved by the practice of making settlements and wills, in which, for the most part under no compulsion of technical rules, but purely for the sake of the convenience or security which can be derived from such a separation of rights, legal rights are deliberately and carefully withheld from the beneficiaries and vested in trustees. But though it is convenient and expedient that the law

should allow one and the same thing to be, at one and the same time, subject to certain rights of ownership and dominion in A., and to other rights of ownership and dominion in B., partly subordinate and partly paramount to those in A., it does not follow that those two sets of rights should not in some cases, if not in every case, be allowed and enforced in the same court. As a mere matter of law, there is no reason why the legal title of a trustee of property, and the equitable title of the person for whose benefit he holds the property, should not be admitted, and, if necessary, enforced, in the Court of Queen's Bench as freely as in the Court of Chancery; and when the only thing required of the Court is to pronounce judgment as to the right, and, if necessary, either to enforce specific performance of the corresponding duty, or to give damages for the breach of duty, there can seldom be any reason for making a distinction between legal and equitable jurisdiction. On the other hand, when the Court is asked to undertake the guardianship of a person under disability, or the administration or management of an estate or fund, or to deal with any other difficulty which cannot be solved by a single judgment or execution, there may be, and doubtless often is, a necessity for a different machinery from that which is required for the settlement of ordinary disputes as to law or fact. But as the principles and rules which must govern in suits and proceedings of an administrative character are part of the system of law applicable to contentious suits, the same judge who is competent to decide the latter ought to be equal to the superintendence and control of the former. And it will probably be found that, while the establishment of the county courts has been a gross blunder, the union of almost every kind of civil jurisdiction in the same court, which they alone exhibit, involves the germ of an important and necessary reform in the jurisdiction and practice of the superior courts. If the existing distinctions between legal and equitable rights and remedies were revised, and purged by the abolition of all those that have become merely formal and superfluous—if the existing staff of judges of the superior courts were considerably increased—if all distinctions of courts as to jurisdiction and procedure were abolished; the course of procedure in each case, whether civil or criminal, being regulated solely by the nature of the subject-matter and the object of the proceeding—if the judges were assisted in the administration of the business of their courts by subordinate officers, distributed over the country, with judicial authority in minor cases, subject to revision by their superiors, and with administrative functions similar to those now exercised by the Masters of the courts of law and the Chief Clerks in equity—the principles and practice of the law might be greatly simplified, and the enormous and expensive nuisance of the county courts abolished. There is no reason to doubt, that, if the rules of law and equity were judiciously harmonised and combined, the reports carefully expurgated and digested, the modern statute law and the rules of procedure revised and codified, every lawyer qualified by capacity and industry for a seat on the bench, would find it easy to master the principles and prac-

tice of the law in every department, the laws would generally be better understood, and the great consequential improvement in the certainty and uniformity of the course of justice, would vastly diminish litigation, and lighten the expenses of the judicial establishment.

### ON THE PRESENT SYSTEM OF SUMMONING SPECIAL JURIES IN LONDON AND MIDDLESEX.

THE present system, it is submitted, causes the maximum of inconvenience to jurors, is disadvantageous to suitors, and unsatisfactory to all concerned either in the conduct of litigation or the administration of justice. These evils are all avoidable, and by a simple and easy reformation could be entirely removed. The proposed alteration is in the three following respects:—

- (1). The assimilation of the mode of summoning special jurors in London and Middlesex to that which prevails throughout the whole of the rest of England, by striking one or more general panels to try all the special jury causes entered for any sittings.
- (2). A more careful revision of the list of persons liable to serve on special juries; and
- (3). The adoption of arrangements by which the labour of serving may be made to fall more equally on those liable to it.

The present system causes the maximum of inconvenience to jurors.

For, taking as an example the case of one of the superior courts only, the average number of causes in each day's list is four. There being twenty-four jurors on each panel, ninety-six are thus brought to the court every morning; and taking an average (which could be shewn, however, to be a too favourable one) throughout the day, the number of jurors constantly kept in attendance is forty-eight. If a general panel were summoned, this average (taken on the most unfavourable estimate) would be eighteen.

But the compulsory attendance every morning of the unnecessary number of ninety-six jurors, and the detention of an average proportion of more than half their body throughout the day, represents only the labour imposed upon the particular jurors who are summoned for the causes in the day's list. Much inconvenience is suffered by an indefinite number of other jurors beyond these ninety-six. For, in distributing the whole number of causes entered for trial at any sittings over the separate days allotted for such sittings, the associate must appoint, in the first instance, as many as seven or eight causes for each day, to allow for the large proportion which are afterwards in various ways withdrawn from the list. And even after making this allowance, it is necessary to have rather a larger number of causes left standing for trial on each day than can be expected to be then disposed of, to preclude the possibility of the time of the Court being wasted through the abrupt terminations of trials, postponements, or settlements at the last moment, and the like; any such waste of time representing a very heavy cost to the suitors. Consequently, the supply of causes which should be made available for being put into the day's list, in case of need, by having been appointed and provided with juries, ought slightly to exceed the consuming powers of the court, and there should, therefore, always be a small accumulation of causes ready for trial.

But the result of this plan, as it affects the jurors, may be shewn by example. Taking the most usual

circumstances, namely, that about eight causes are originally appointed for the first day of the sittings, and that four of these are disposed of without coming to trial, it is probable that juries will have been summoned for two of these four causes. Forty-eight jurors are thus brought to the court, in many cases from long distances, merely to hear that they will not be wanted at all, or that they will have to attend again at some future date, which may or may not be then fixed. The same thing will occur on every succeeding day of the sittings, and when, as constantly happens, through the unforeseen protraction of some trial or trials, the arrear of causes not tried on the dates for which they were appointed becomes considerable, a multitude of jurors, causing a crowd and disturbance, are brought to the court to ask for explanations as to what has become of the causes on which they have been respectively summoned, and to get what information they can as to the time when they will be likely to be actually wanted. Were the system of general panels adopted, none of these inconveniences could arise. It has been tried how far it might be possible to mitigate these evils by deferring the appointments of causes until the very latest moment which would admit of the panel in each case being summoned for the expected time of trial, so that the dates at which the several sets of jurors would be actually wanted might be better foreseen; but this only produced equal inconvenience in another form, since the notices of summons were then so much the shorter.

A large proportion of the hardship suffered by jurors arises from the absolute uncertainty as to the date when, and for what period, they will be required; so much so, that one who is summoned for the first day of the sittings can hardly make any engagement for the week or ten days following with any security of being able to fulfil it. He is summoned, for example, for a Monday. On attending then, he may find that the case is deferred to the following Monday, and when that day arrives there may be other causes which, for one reason or another, may have priority to his. He thus, in fact, is put to as much inconvenience as if he had been on the panels of two or three cases. This uncertainty affects not only the particular individuals who happen for the moment to be selected as jurors, but the whole of the community which is liable to serve, since no one can tell that his engagements may not be dislocated by a sudden summons.

Another grievance is the multiplicity of summonses to which special jurors are liable. The same juror may be summoned to all the three Superior Common Law Courts, the Chancery Courts, the Divorce Court, and several other courts, at the same time, and for every special jury cause entered for trial at any of those courts, his liability to serve being subject to no limitation whatever. In the confusion which hence very frequently results, it is quite possible, that, with the sincere intention of fulfilling his duty, he may, while waiting fruitlessly in one court, miss serving, when much wanted, in another, and he is not unfrequently, to escape a fine, put to the trouble of making an affidavit, or obtaining a certificate from the associate, to prove that he was serving or waiting in one court when called in another. The suitors also suffer from this confusion, the effect of it being that even jurors who wish to serve are not forthcoming at the proper place and time, while, on the other hand, it gives opportunities to those whose object is only to make a pretence of being in attendance, to do so without incurring a penalty. The receipt, too, of a multiplicity of summonses seems, not unreasonably, to the juror an irritating form of persecution and injustice, especially when he sees that many of his neighbours are never called upon to serve at all. It can

hardly be wondered that allegations of favouritism and bribery are constantly and openly made against the sheriff's officers.

There are frequent instances in which the same juror is summoned both on special and common juries in London and Middlesex. This, though in accordance with the law, is at variance with the practice which has been substituted for the law, and is, therefore, undoubtedly, a wrong.

Lastly, as to the payment of jurors. At present it is the established practice to hold that each special juror who has been actually sworn is entitled to one guinea, whatever the length of the trial may have been. Under this system, the payments may be said to bear scarcely any relation to the duty done. For, in the first place, in a large number of cases, those, namely, which are not actually tried, many of the jurors have been put to much inconvenience by being brought to the court, and, perhaps, kept waiting there for several days, and these get absolutely nothing. For example, a plaintiff will often keep a cause standing in the paper until it is actually called on, without ever having had any real intention of trying it, but taking advantage, up to the last moment, of the chance that the defendant, however conclusive his answer may be, may prefer to pay something by way of compromise rather than encounter the uncertainties of a trial. The converse case is still more frequent, of a defendant fully aware of the certainty of an adverse verdict, and never intending to proceed to trial, yet refusing a settlement till the last moment, with a view to deferring payment as long as possible, or hoping to obtain better terms from his adversary. In these cases the jurors receive nothing, however protracted their attendance at the court may have been. Also, in the common event of there being more than twelve jurors on a panel ready to answer to their names when called, those who are not wanted receive nothing. It is unnecessary to refer to the familiar grievance of jurors being kept in the box many days, and at last receiving one guinea a piece for their services. It is sufficient to say, that if a general panel were summoned, the fair payment of jurors, in proportion to their services, could easily be adjusted.

The present system is very disadvantageous to the suitors.

It should be remembered that the question of the rights of suitors is one not merely of abstract justice, but of personal interest to the whole community, every one being liable to become a litigant.

The present system, in the first place, is a most expensive one to suitors. For a panel of twenty-four jurors being now summoned for each cause, and there being, on an average, at least a hundred special jury causes for each of the three superior courts to try at a London sittings, on about three-fourths of which panels are struck, the aggregate number of summonses for which the suitors have to pay in one court alone is 1800. Were two or three general panels to be summoned for each court, to divide the labour of the sittings between them, fifty jurors on each of such panels would form an ample supply. But this total of 1800 summonses does not, after all, represent the whole expense to the suitors, since trials have frequently, for various reasons, to stand over for a short time; and when the date to which they are deferred cannot be fixed at once, fresh summonses, at renewed cost, have to be served upon all the jurors. Other expenses which, though inconsiderable, should be removed, as being quite unnecessary, arise from the arrangements which now have to be made for providing juries. Such are the letters between the associate and the attorneys, in the first instance, to settle

the appointment of a cause for a particular date, and then the communication between the attorneys and the sheriff's officers, and their subsequent meeting to reduce a panel.

It cannot be alleged that quite as eligible jurors would not be obtained from a general panel as from the smaller list now specially settled between the attorneys. For so many of the jurors nominated under the present system prove, in the result, to be dead, or in some manner disqualified, that it is plain that the attorneys can often know but little of the names which they select. Owing to the imperfect manner in which the jury lists are kept, the short notice of summonses which is given, and the natural disinclination of jurors, under the present conditions of service, to attend, a full special jury is not, in the majority of cases, obtained, and the parties, if they wish the trial to proceed, must either make up the requisite number by talesmen called from the common jury panel, or else agree that the cause shall be tried by such special jurors as are available. But a mixed jury has been found to be an unsatisfactory tribunal, for reasons which need not be dwelt on here. It should also be observed, that the talesmen called to make up a full jury belong to a lower class than was contemplated by the law. By the Jury Acts, speaking generally, all persons liable to serve as jurors are summonable on common juries; and of these, such as possess certain stated qualifications are made also subject to be called on special juries. In practice, these directions of the law are disregarded, and the whole body of persons liable to serve on juries is divided into the two classes of special and common jurors. Through this arrangement, common jurors are, as a body, of a lower class than was designed by the law, and consequently fewer talesmen can be obtained from them capable of taking the place of special jurors in cases of any difficulty, where educated intelligence and readiness of apprehension are indispensable.

The practice of bringing a separate panel to court to serve for one particular trial only, is another of the causes why full special juries are seldom obtained. For when nine or ten jurors have entered the box, the others, having ascertained themselves to be now secure from a fine, frequently go away, some doing so even after they have openly answered to their names. Hence the usual number of special jurors which is obtained is from eight to ten. Were a general panel of jurors bound to be in attendance for a certain period, whether called or not, the temptation to evade going into the box would be removed.

A trial is also sometimes less satisfactorily conducted, through the circumstance, that the jury are to be altogether free at its termination. They urge the Court, if they have any opportunity of doing so, to sit to almost any hour, however late, rather than bring them together again on the following day. This desire is natural enough, but, if acceded to, does not conduce to the deliberate administration of justice.

Suitors are now always liable to the alternative of being compelled, for want of a sufficient number of special jurors, either to have their cause submitted to a tribunal which experience has shewn to be unsatisfactory, or else to let the trial be put off till a future date, when the same difficulty may very probably recur. It is disheartening to a suitor to have to submit a case, on the result of which, as often happens, his whole credit and position may depend, to an incompetent tribunal, or at any rate to one of less capacity than has been designed for him by the law. Even this evil, however, is usually preferred to that of incurring the very heavy expenses caused by delay, by preparing for trial a second time, and bringing witnesses again to the court, with, perhaps, no better

result. And even if it be agreed to pray a tales, it is not always possible to get talesmen, especially after the common jury cases have been finished, and the common jurors discharged. For, under the existing practice of dividing jurors into two classes, it is unjust to common jurors to compel them to remain in attendance after the common jury cases have been all tried, since to do so is to impose a double duty upon them. It may be remarked, that the probability of getting special jurors is now actually less, in proportion to the importance of the cause to be tried. For when a cause is understood to be important, it is usually suspected as likely to be long, and the risk of a fine is preferred to a protracted confinement in the jury box. The probability which hence ensues, of heavy causes going off for want of jurors, often compels the associate to provide against such contingencies by a larger day's list, at an augmented cost to suitors. If a general panel were summoned, it would be easy for the associate to contrive that no set of jurors should be detained for more than a prescribed period, and the reluctance to try long causes would thus be removed.

The present system is unsatisfactory to all concerned, either in the conduct of litigation or the administration of justice.

For attorneys are scarcely less anxious than their clients, that their causes should be tried by a fit tribunal; and from what has been said, it should appear that this cannot, under the present system, be secured. The Court, too, suffers from being constantly beset by irritated and impatient jurymen, often loud in their complaints of the hardships which they undoubtedly suffer.

The alterations required in the system are, it is submitted, as follows:—

Whether or no the practice of dividing jurors into two separate classes should be altered or confirmed by legislative authority, the special jury panels summoned should be general, to serve for a certain number of days, and not for one particular cause only. It would appear also, that common jurors may justly claim the relief of shortened periods of service. The list of persons liable to serve as jurors should be carefully corrected from time to time, either in the mode suggested by Mr. Serjeant Pulling in a recent paper published in the "Law Review," or in some other efficient manner. At present, the list in Middlesex is incumbered by the catalogue of a multitude of people who long since died, or left the abodes in respect of which their names were returned to the sheriff; and in the city, members of firms residing abroad, or in the country, and who never come to London at all, are treated as available jurors. It is reasonable, on the other hand, to suppose that there must be a number of duly qualified persons whose names are omitted from the lists furnished to the sheriff. In whatever way a general panel may be struck, it should be carefully revised, so as to ascertain that it will actually produce a sufficient supply of jurors, while the useless trouble and expense of summoning persons who are certain to be excused is avoided. Care should also be taken to inflict no unnecessary inconvenience on jurors. For example, more than one member of a firm should not be selected for the same period of service. Some system should also be adopted, under which the whole body of persons qualified as jurors may take the duty in turn. A corrected panel of a sufficient number of names should be made up, and the list published some time before the sittings, so as to enable those nominated on it to make provision for their absence from business. The jurors on a general panel would enjoy the advantage, which they do not now possess, of being able to arrange among themselves for the temporary

absences of individuals of their body for unforeseen exigencies, a proportion of their number, sufficient for the purposes of the court, remaining always in attendance. The applications, now so constant, to the officers of the courts for remission from service on the ground of urgent private business, could not, under circumstances of attendance thus altered, be made; and no exemptions, such as that of over-age, which could have been claimed at the sheriff's office, should afterwards be recognised at the courts. An effective panel having been thus obtained, and having served for some fixed period, the persons on it should be entitled to receive from the associate certificates protecting them from being called upon again for a certain time, or until after the discharge of similar duty by all the other persons on the same jury list. Although it can scarcely, perhaps, be expected that to serve as a juror can ever be regarded as a privilege, still it is certain that the duty might, under proper arrangements, be rendered far less onerous than it now is, so as to be acquiesced in without irritation or complaint.

T. W. ERLE,  
Associate, Court of Common Pleas.

### FRIENDLY SOCIETIES.

*Suggestions for the Establishment of Friendly Societies, on Sound Principles. By John Todd Pratt, Esq., the Registrar of Friendly Societies in England.*

(Concluded from p. 484).

#### TABLE NO. I.

Per Act 6 & 7 Vict. c. 45.

#### IMMEDIATE LIFE ANNUITIES.—MONEY NOT RETURNABLE.

Table shewing the Sum to be paid for an Immediate Life Annuity of £1., according to the Age and Sex of the Person upon whose Life the Annuity is to depend. The first Half-yearly Payment of the said Annuity will in all cases become due and be payable on the Second Quarterly Day of Payment next following the Day of Purchase.

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Males.		Females.	
	Money to be paid down in one Sum at the Time of Purchase.		Money to be paid down in one Sum at the Time of Purchase.	
If 10 and under 11	£	s. d.	£	s. d.
11	21	11 0	22	15 4
12	21	7 5	22	12 1
13	21	3 8	22	8 8
14	20	19 8	22	5 3
15	20	15 7	22	1 10
16	20	11 4	21	18 7
17	20	7 2	21	15 11
18	20	3 2	21	13 5
19	19	19 7	21	11 0
20	19	16 4	21	8 8
21	19	13 5	21	6 5
22	19	10 11	21	3 11
23	19	9 0	21	1 4
24	19	7 2	20	18 9
25	19	5 4	20	16 0
26	19	3 6	20	13 2
27	19	1 5	20	10 3
28	18	18 10	20	7 3



Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Males.			Females.		
	Money to be paid down in one Sum at the Time of the Purchase.			Money to be paid down in one Sum at the Time of Purchase.		
	£	s.	d.	£	s.	d.
If 28 and under 29	18	16	2	20	4	2
29 " 30	18	13	3	20	1	0
30 " 31	18	10	2	19	17	9
31 " 32	18	6	11	19	14	5
32 " 33	18	3	7	19	11	0
33 " 34	18	0	1	19	7	6
34 " 35	17	16	4	19	4	0
35 " 36	17	12	5	19	0	5
36 " 37	17	8	8	18	16	11
37 " 38	17	4	1	18	13	4
38 " 39	16	19	9	18	9	7
39 " 40	16	15	3	18	5	9
40 " 41	16	10	9	18	1	10
41 " 42	16	6	0	17	17	8
42 " 43	16	1	0	17	13	5
43 " 44	15	15	10	17	9	0
44 " 45	15	10	5	17	4	5
45 " 46	15	4	9	16	19	7
46 " 47	14	18	11	16	14	8
47 " 48	14	13	8	16	9	6
48 " 49	14	6	2	16	4	1
49 " 50	13	19	7	15	18	7
50 " 51	13	12	11	15	12	9
51 " 52	13	6	9	15	6	9
52 " 53	12	19	9	15	0	5
53 " 54	12	13	4	14	14	0
54 " 55	12	7	2	14	7	4
55 " 56	12	1	0	14	0	7
56 " 57	11	15	0	13	13	9
57 " 58	11	9	1	13	6	10
58 " 59	11	3	3	12	19	9
59 " 60	10	17	3	12	12	8
60 " 61	10	11	2	12	5	6
61 " 62	10	4	10	11	18	1
62 " 63	9	18	3	11	10	6
63 " 64	9	11	5	11	2	11
64 " 65	9	4	7	10	15	4
65 " 66	8	17	10	10	7	8
66 " 67	8	11	1	10	0	1
67 " 68	8	4	9	9	12	6
68 " 69	7	18	7	9	5	0
69 " 70	7	12	5	8	17	5
70 " 71	7	6	4	8	9	11
71 " 72	7	0	6	8	2	8
72 " 73	6	14	10	7	15	7
73 " 74	6	9	1	7	8	7
74 " 75	6	3	1	7	1	11
75 " 76	5	17	0	6	15	5
76 " 77	5	10	8	6	8	11
77 " 78	5	3	7	6	2	9
78 " 79	4	16	6	5	17	1
79 " 80	4	9	10	5	11	10
80 or any greater age.	4	3	3	5	7	0

## EXTRACT from TABLE NO. II.

Shewing the Monthly Contributions required at the Time of Purchase to secure 12*l.* a Year for Life, according to the Age and Sex of the Person upon whose Life the Annuity is to depend. The first Half-yearly Payment of the said Annuity will in all

cases become due and be payable on the Second Quarterly Day of Payment next following any one of the undermentioned Periods, reckoning such Periods from the Day of Purchase. In this Class of Annuities the Purchase Money will be returned, on application of the Party, if the Annuity shall not have commenced, or on the Death of the Party.

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Annuity to commence at 60.	
	Males.	Females.
	Monthly Sum required.	Monthly Sum required.
	s. d.	s. d.
20	2 7	3 0
25	3 3	3 9
30	4 1	4 9
35	5 4	6 2

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Annuity to commence at 65.	
	Males.	Females.
	Monthly Sum required.	Monthly Sum required.
	<i>s.</i> <i>d.</i>	<i>s.</i> <i>d.</i>
20	1 9	2 1
25	2 2	2 6
30	2 9	3 2
35	3 5	4 0

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Annuity to commence at 70.	
	Males.	Females.
	Monthly Sum required.	Monthly Sum required.
	s. d.	s. d.
20	1 2	1 5
25	1 6	1 8
30	1 10	2 1
35	2 3	2 7

## EXAMPLES in Deferred Life Annuities.

On the 20th May, 1861, a male, aged twenty-five, and under twenty-six, contracts, by annual payments, for an annuity of 1*l.* a year, to be enjoyed by him, during the rest of his life after the expiration of a period of thirty-five years, reckoning such period from the time of purchase. Under that contract, the party would receive the first half-yearly payment of the said annuity on the 10th October, 1896, that being the second quarterly day of payment next following the expiration of the term for which the annuity was agreed to be deferred.

In this case the party would be required—first, to pay down 3*s.* 3*d.* on entering into the contract on the 20th May, 1861; and, secondly, to continue to make the same payment of 3*s.* 3*d.* annually on the 5th April in each of the succeeding thirty-five years, the last annual payment being to be made on the 5th April, 1896.

## EXTRACT from TABLE NO. III.

Shewing the Monthly Contributions required at the Time of Purchase to secure 12*l.* a Year for Life, according to the Age and Sex of the Person upon whose Life the Annuity is to depend. The first Half-yearly Payment of the said Annuity will in all cases become due and be payable on the Second Quarterly Day of Payment next following any one

of the undermentioned Periods, reckoning such Periods from the Day of Purchase. In this Class of Annuities the Purchase Money will not be returned in any event.

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Annuity to commence at 60.	
	Males.	Females.
	Monthly Sum required.	Monthly Sum required.
20	s. d. 1 8	s. d. 2 2
25	2 2	2 10
30	2 10	3 9
35	3 11	5 0

Age of the Person at the Time of Purchase upon whose Life the Annuity is to depend.	Annuity to commence at 65.	
	Males.	Females.
	Monthly Sum required.	Monthly Sum required.
20	s. d. 1 0	s. d. 1 4
25	1 3	1 9
30	1 8	2 3
35	2 3	3 0

#### EXAMPLES from the TABLES.

[These examples do not apply to mariners, painters, railway servants, miners, nor colliers.]

##### Male, aged

Doctor . . . 0 4	} 20.—By paying 4s. 8½d. per month may secure medical attendance, 10s. a week in sickness until sixty, and 20l. a year for life after sixty, and 20l. at death. All the money paid for the annuity being returnable if the annuity shall not have commenced, or on the death of the party before sixty.
Sickness . . . 1 0	
Management 0 2	
Annuity . . . 2 7	
Death . . . 0 7½	
4 8½	

Doctor . . . 0 4	} 25.—May secure the same benefits, on payment of 5s. 6½d. monthly.
Sickness . . . 1 1	
Management 0 2	
Annuity . . . 3 3	
Death . . . 0 8½	
5 6½	

Doctor . . . 0 4	} 30.—May secure the same benefits, on payment of 6s. 5½d. monthly.
Sickness . . . 1 2	
Management 0 2	
Annuity . . . 4 1	
Death . . . 0 9½	
6 5½	

Doctor . . . 0 4	} 35.—May secure the same benefits, on payment of 8s. monthly.
Sickness . . . 1 3	
Management 9 2	
Annuity . . . 5 4	
Death . . . 0 11	
8 0	

Doctor . . . 0 4	} 20.—By paying 3s. 9½d. per month may secure medical attendance, 10s. a week in sickness until sixty, and 20l. at death; no money being returnable.
Sickness . . . 1 0	
Management 0 2	
Annuity . . . 1 8	
Death . . . 0 7½	
3 9½	

##### Male aged

Doctor . . . 0 4	} 25.—May secure the same benefits, on payment of 4s. 5½d. monthly.
Sickness . . . 1 1	
Management 0 2	
Annuity . . . 2 2	
Death . . . 0 8½	
4 5½	

Doctor . . . 0 4	} 30.—May secure the same benefits, on payment of 5s. 3½d. monthly.
Sickness . . . 1 2	
Management 0 2	
Annuity . . . 2 10	
Death . . . 0 9½	
5 3½	

Doctor . . . 0 4	} 35.—May secure the same benefits, on payment of 6s. 7d. monthly.
Sickness . . . 1 3	
Management 0 2	
Annuity . . . 3 11	
Death . . . 0 11	
6 7	

Doctor . . . 0 4	} 20.—By paying 3s. 11½d. per month may secure medical attendance, 10s. a week in sickness until sixty-five, 12l. a year for life after sixty-five, and 20l. at death. All the money paid for the annuity being returnable if the annuity shall not have commenced, or on the death of the party before sixty-five.
Sickness . . . 1 1	
Management 0 2	
Annuity . . . 1 9	
Death . . . 0 7½	
3 11½	

Doctor . . . 0 4	} 25.—May secure the same benefits, on payment of 4s. 7d. monthly.
Sickness . . . 1 2½	
Management 0 2	
Annuity . . . 2 9	
Death . . . 0 8½	
4 7	

Doctor . . . 0 4	} 30.—May secure the same benefits, on payment of 5s. 4d. monthly.
Sickness . . . 1 3½	
Management 0 2	
Annuity . . . 2 9	
Death . . . 0 9½	
5 4	

Doctor . . . 0 4	} 35.—May secure the same benefits, on payment of 6s. 3d. monthly.
Sickness . . . 1 5	
Management 0 2	
Annuity . . . 3 5	
Death . . . 0 11	
6 3	

Doctor . . . 0 4	} 20.—By paying 3s. 2½d. per month may secure medical attendance, 10s. a week in sickness until sixty-five, 12l. a year for life after sixty-five, and 20l. at death; no money being returnable.
Sickness . . . 1 1	
Management 0 2	
Annuity . . . 1 0	
Death . . . 0 7½	
3 2½	

Doctor . . . 0 4	} 25.—May secure the same benefits, on payment of 3s. 8d. monthly.
Sickness . . . 1 2½	
Management 0 2	
Annuity . . . 1 3	
Death . . . 0 8½	
3 8	

Doctor . . . 0 4	} 30.—May secure the same benefits, on payment of 4s. 3d. monthly.
Sickness . . . 1 3½	
Management 0 2	
Annuity . . . 1 8	
Death . . . 0 9½	
4 3	

Male aged		
s.	d.	
Doctor . . .	0 4	} 25.—May secure the same benefits, on payment of 5s. 1d. monthly.
Sickness . . .	1 5	
Management 0	2	
Annuity . . .	2 3	
Death . . .	0 11	
	5 1	
—		
Doctor . . .	0 4	} 20.—By paying 3s. 5½d. per month may secure medical attendance, 10s. a week in sickness until seventy, 12l. a year for life after seventy, and 90l. at death. All the money paid for the annuity being returnable if the annuity shall not have commenced, or on the death of the party before seventy.
Sickness . . .	1 2	
Management 0	2	
Annuity . . .	1 2	
Death . . .	0 7½	
	3 5½	
—		
Doctor . . .	0 4	} 25.—May secure the same benefits, on payment of 4s. monthly.
Sickness . . .	1 3½	
Management 0	2	
Annuity . . .	1 6	
Death . . .	0 8½	
	4 0	
—		
Doctor . . .	0 4	} 30.—May secure the same benefits, on payment of 4s. 6½d. monthly.
Sickness . . .	1 5	
Management 0	2	
Annuity . . .	1 10	
Death . . .	0 9½	
	4 6½	
—		
Doctor . . .	0 4	} 35.—May secure the same benefits, on payment of 5s. 2½d. monthly.
Sickness . . .	1 6½	
Management 0	2	
Annuity . . .	2 8	
Death . . .	0 11	
	5 2½	

**CAUTION.**—Persons desirous of providing for relief in sickness or old age, or of securing a sum of money payable at death, should, before they become members of any society on the application of agents, obtain a copy of the rules, and should not be satisfied with a card on which payments only are entered. They should also ascertain whether the rules have been duly certified, and particularly in what manner they, or persons claiming on their death, are to proceed in case of dispute; as in societies established in London, Bristol, Liverpool, or Manchester, &c., disputes are by the rules of the greater part of these to be decided by arbitration, in the place where the society is established; that is, a claimant living in Manchester having insured in a society established in London would, in case of dispute, have to attend an arbitration in London. In addition to which, the parties insuring should ascertain the names of the trustees and officers of the society, their residence and business, as well as their respectability.

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By order of the Council,  
(Signed) EDW. RYAN, Chairman, pro tem.  
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## THE JURIST.

LONDON, JANUARY 6, 1866.

## MARTIAL LAW IN JAMAICA.

It often happens that occurrences in our dominions or possessions abroad awaken attention to questions which, in our own times, are not likely to arise here at home. And this has been the case with recent lamentable occurrences in Jamaica, which have directed attention to a subject little likely to present itself in England—the subject of martial law. Perhaps, from the very circumstance that it has not arisen here for ages, it is hardly understood, and certainly there are errors in our recent text-books about it.

It is a natural notion in the minds of most men, even of lawyers, that the ordinary law of the land is its *only* law, and that what is not in accordance with it must be *contrary* to law and illegal, yet the very phrase “common law” might be deemed to imply that it is the law for *common* times and times of *peace*, when it can be carried out and enforced; not for extraordinary times and times of war, when the ordinary authorities are unable to enforce it. And in every age of the history of our law it has been recognised that in such times the Crown has authority to proclaim martial or military law, by virtue of its prerogative to declare a state of war; and that then the ordinary law of the realm is for the time suspended. As this is recognised by the common law, it is as much part of the law of the realm as the common law itself. Nor is this the only instance in which our common law recognises a procedure different from its own. Thus it was long ago laid down:—“*Sont deux powers et process; s. potencia ordinata, et absoluta: ordinata est come ley positive, come certain ordre; sed lex naturæ non habet certum ordinem, sed per quemquemque modum veritas scire poteret; et ideo dicitur processus absolutus; et a lege naturæ requiritur que les parties sont presents (ou que ils sont absente per contumacy); et examinatio veritatis.*” (Year Book, 9 Edw. 4, c. 15). So, in Bracton (temp. Hen. 2), it is laid down “that all that is necessary to justice is reasonable services and diligent examination of the truth.” (De Legibus, lib. iii). And a long series of authorities attest, that in numerous classes of cases, where the common-law procedure does not apply, all that the common law (which controls all inferior jurisdictions) requires is, that the rules of *natural justice* should be observed, which require that the party accused should be heard, and that there shall be a fair and diligent examination of the truth. (Vide *Bagg's case*, 11 Co. 93; *Rex v. Chalk*, 1 Ld. Raym. 225; *Reg. v. Dyer*, 6 Mod. 41; *Rex v. Gregg*, 8 Mod. 3; *The Chancellor of Cambridge University*, 2 Ld. Raym. 1334). This is the law as regards all inferior jurisdictions not bound by the rules of the common law, and one of them is the law military, which applies where a state of law has been proclaimed by the Crown or its Viceroy. For the law military or martial law is

no more nor less than the application of the rules of natural justice to a state of war lawfully proclaimed and declared; that is, it is a law not bound by any formal rules, but only by the great and fundamental rules of natural justice. It is the undoubted prerogative of the Crown, to declare a state of war, and our common law of treason, of which one of the overt acts is levying of war against the Crown, acknowledges that there may be a state of war between subjects and their Sovereigns; which is the case wherever there is an armed insurrection or rebellion, as distinct from mere personal injury or private robbery. Nothing can be more clear, than if a body of subjects assemble in arms, with a design, by their combined force, and by means of felonious violence and outrage, to upset and destroy lawful rule and the existing authorities of the State, it is a “levying of war” against the Crown; and if it be with such a force that the ordinary authorities of the country are not able to cope with it, the Crown may declare a state of war, and, as its consequence, proclaim martial law, until the rebellion is suppressed, and the ordinary power of the law restored in peace. Happily, for ages we have not known any instance of martial law proclaimed (the last case for it being that of the rebellion of 1745), and though there have been several instances even in our own times, when it was on the very eve of being required, yet happily it has not been actually required, and the ordinary authorities, aided by the military, have been enabled to preserve the peace. But in ancient times, before the authority of the law was so well established, the Sovereign often had to resort to arms in order to reduce to obedience proud and powerful subjects, who resisted the law and levied war against him, and who were dealt with summarily by martial law. Contemporary history contains records of such cases occurring in the age of the Great Charters, and it is curious, that although the first Charter had a clause—evidently drawn rather in the interest of the barons—directed to repress or restrict this stern but necessary prerogative of the Crown, the very clause drawn with that view, is drawn in terms which involve an implied recognition of the existence of the power in time of war; and all subsequent statutes so recognise it, and denounce and prohibit it only in times of *peace*.

One of the main articles of the Great Charter is—“*Nullus liber homo captratur vel imprisonetur; aut aliquo modo destratur, nec super eum ibimus nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ.*” The latter words of the clause clearly allude to some law by which men might lose their lives *without* trial by jury; and this is further shewn by the only sensible interpretation to be put upon the previous words, “*Nec super eum ibimus,*” &c., which have, indeed, perplexed legal antiquarians, but only from a want of attention to contemporary history, which makes the true sense clear and obvious enough; for we find, from the early English Chronicles, that about the time of the Charters, the King had constantly to levy war against proud and refractory barons, like Faulk, for instance, who seized and put to death some of the King's judges, and then fortified himself in a castle against the royal authority

(Roger de Wendover, 111, 347, 349); and the King had actually to levy a little army to dislodge him and liberate his judges; and, in the exercise of the rights of martial law, he summarily hanged those who were thus taken in arms against him. It is implied in the very clause in Magna Charta, which the barons put in to prevent the ordinary exercise of such authority, that it might be lawfully exercised in case of actual insurrection or rebellion, and the levying of war against the Sovereign, which would amount to high treason, and could always lawfully be resisted by force of arms; and this not only under the personal order or direction of the Sovereign, but by his officers; as, for instance, the sheriff, who could always call out the whole power of the county to resist rebellion, and put it down by force of arms. But the exercise of martial or military law was always limited to time of war, or rebellion or armed insurrection, which amounted to levying of war against the Sovereign in the eye of the law. Thus it was laid down:—"If a lieutenant or other person have a commission of martial authority in time of peace, and hang or otherwise execute any man by colour of martial law, this is murder, for it is against Magna Charta." (8 Inst. 52). There can be no doubt, that all through our history, up to the era of the Revolution, the Crown had issued commissions of martial law in times of rebellion and insurrection, and our constitutional historians or writers have not shewn that these were illegal. Under the Tudors, indeed, it became not unusual to issue such commissions in periods of peace, merely to repress such bands of robbers or marauders which, as the result of disturbed times, often press upon a country, but are without that purpose or design to upset or destroy the established rule or order of things which is necessary to constitute the crimes of rebellion or treason, or cause a state of war. Under Elizabeth, especially, these commissions, issued in time of peace, became exceedingly arbitrary. (Vide 4 Hume's Hist. Eng. 429; 5 Hume's Hist. Eng. 456). Still, Lord Bacon laid it down, that those who caused rebellion were liable to be put down by martial law. (Ib.) And though it has been imagined that the Petition of Right abolished the power of the Crown to establish martial law in periods of rebellion, this is an entire error. The Petition of Right recited, as one of the grievances it proposed to repress, "that of late divers commissions had been issued by which persons had been appointed commissioners, with power and authority to proceed within the land according to the justice of martial law, against such soldiers and marines, or other dissolve persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour, and by such summary course and order as is agreeable to martial law, and exercised in armies in time of war, to proceed to the trial and condemnation of such offenders, and cause them to be executed and put to death, according to the law martial." Now, this plainly implies—first, that there is such a thing as martial law; next, that in time of war it is recognised by the law of the realm; and, thirdly, that it allows of summary trial and execution. And the grievance alleged is, that commissions of martial law were issued in time of peace against offences cognisable at common law. Constitutional authorities and statutes, subsequent to the Revolution, recognise the doctrine, that martial law can be proclaimed and exercised in periods of rebellion, and that this is one of the prerogatives of the Crown, arising from its undoubted prerogative to proclaim a state of war, and provide for it as a natural necessity or emergency requiring the exercise of an absolute and arbitrary authority. "Martial law is built upon no settled principles, but is entirely arbitrary in its discretion, and

is, in truth, no law, but something indulged rather than allowed as a temporary excrescence arising out of the distemper of the State, and not any part of the permanent law of the kingdom, but for necessary order and discipline, as the only thing which can give it; and, therefore, it ought not to be permitted in time of peace, when the King's Courts are open for all persons to secure justice according to the law of the land." (Hale's Hist. Com. Law, 34; 1 Bl. Com. 413). These principles have been in modern times, indeed, distinctly laid down even in our statutes, and the decisions in our courts of common law. The Mutiny Act has, for the last century and a half annually recited the proposition affirmed in Magna Charta and the Petition of Right, "that no man can be forejudged of life or limb in time of peace by martial law, or in any other manner than by the judgment of his peers, according to the long-established laws of the realm;" thus affirming the construction of those Great Charters which has been above elucidated, and recognising, by plain implication, that in time of peace martial law may be acted upon. So, the Riot Acts by implication affirm the same doctrine, for all of them (3 & 4 Edw. 6, c. 5; 1 Ann. stat. 2, c. 12; 1 Eliz. c. 16; 1 Geo. 1, stat. 2, c. 5; 7 Will. 4 & 1 Vict. c. 91) are in aid of the law already existing, and carry it further, by providing, that in certain specified circumstances, in which it might be doubtful in time of peace whether a mere riotous assemblage could be regarded as rebellious, or as raising a state of war which would justify martial law, the persons thus assembled shall be rendered liable to be treated as felons, and thereupon to be dispersed by military force, or by force of arms in a summary manner, and, if necessary, shot, cut down, or otherwise slain. It is to be observed, that the Riot Act, which applies to a mere unlawful assembly of twelve or more refusing to disperse, is not required where there is a riotous and rebellious mob already engaged in the perpetration of acts of violence and outrage, which are overt acts of rebellion. In such cases, as was established in the Lord George Gordon riots, the military may act without magisterial authority in the suppression of the rebellion; but this is to be distinguished from, though it implies, the power of the Crown to proclaim martial law—i. e. a state of war; for that has two effects—it conveys the authority and the orders of the Crown to the military, so to act as in a state of war; and it also conveys or implies the authority in the military, and the Crown, by virtue of its supreme command over the military, to determine, at all events primarily, when the necessity for martial law has ceased, and to exercise it after acts of actual outrage have ceased. In the Lord George Gordon riots the Attorney-General declared that the military could act without any authority in the repression of actual outrage while it was going on; but he did not say that, without the authority of the Crown, conveyed by proclamation of martial law, they could maintain the exercise of military law over the scene or area of the insurrection after the actual perpetration of acts of violence had ceased, however much measures of military repression might, for a short time, be required to restore order. And the sanction of the Crown, which was conveyed in that case, probably amounted virtually to the establishment of martial law, and would have been exemplified, had it been required, in the more recent case of the Chartist riots, 1848. It is true, that in the latter case the resort to force was only partially and locally required; but it was notorious that vast preparations had been made, and a strong army, with powerful parks of artillery, were provided for the purpose, if necessary, of exercising martial law; and if the insurrection had once begun, and had assumed, as it probably would

have done, the aspect of a deliberate, extensive, and combined insurrection, there can be no doubt that it would have amounted to a levying of war, which would have justified the proclamation and exercise of martial (i. e. military) law until it was entirely and thoroughly suppressed, and peace, and quiet, and confidence perfectly restored.

There is, however, it is obvious, a distinction between what any subject, soldier, or civilian may do, of his own mere motion, to put down actual felonious outrage while it is going on; and what he may do under the Riot Act, by virtue of magisterial authority, against a mere riotous assembly, before any acts of felonious violence; and what he may do by the authority of the Crown, under martial law, for the complete repression of rebellion, for such period as may be necessary after actual violence has ceased. The first, and perhaps the third, were exemplified in the Lord George Gordon riots. The second was exemplified in what is called the Manchester massacre, where the mob were unarmed; and there were no acts of felonious violence. The third was exemplified, or ought to have been, in the case of the Bristol riots, the test of its necessity being the power of the police or civil force to exercise its functions with safety and efficiency; unaided by the military, which would not be until some time after actual insurrection was suppressed. The case of the Bristol riots affords an instance of what was undoubtedly a "levying of war," which would have justified martial law; and it will be borne in mind, that the officer in command was very severely censured for not resorting to it, and not suppressing the insurrection summarily, by the use of military force, without magisterial authority, and without waiting even for the proclamation of martial law, which of course implies that the Crown could have proclaimed martial law.

The difference between the exercise of military force before and after the proclamation of martial law is clear. In the former case, it is strictly limited to the prevention of actual violence—the shooting or striking down of rioters or rebels in the very act of felonious violence. In the other case, a state of war having been proclaimed by the Crown in the exercise of its prerogative, the laws of war apply; and these extend, it is well known, to far greater lengths than the mere repression of violence. In the one case, the rebel or the rioter may be shot in the very act of shooting a man or firing a house; in the other, he may be seized with musket shot, or any other clear signs of guilt, and summarily tried and shot, even though far from the scene of actual violence, or even in his own house. The reason is obvious. Assuming a state of war, the military commander alone is judge of its exigencies; and the peril and pressure of a superior or overwhelming force may be such as to justify, or even require, the most stringent, stern, and summary measures of repression. Such measures could never be allowed to any subjects, soldiers, or others, except in a state of war; and of course no subject, unless representing the Crown, and clothed with the royal authority, could be trusted to proclaim a state of war. Assuming, however, a state of war, the laws of war apply, and the first and fundamental of those laws is, that the superior military authority, that is, in this country the Sovereign, or abroad the governor, is the sole judge of the necessity for the existence or continuance of a state of war, or the measures necessary for its repression and termination. It is a mere matter of arbitrary discretion, provided only that a state of war is proclaimed by the acting lawful authority the Crown or its representative. Of course the Crown, by its ministers, or in the person of its governor, would be responsible for the exercise of this terrible

authority, but would be responsible only to the Crown and to Parliament for excess or error, unless (what is, of course, unlikely to occur) the whole thing was colourable and concocted; in which case the actors would be guilty of murder. But unless this could be set up, then, for any mere error or excess, the minister, the military commander, or the governor, would be responsible only to the Crown and to Parliament. The Crown might censure or dismiss. Parliament might address the Crown for censure or dismissal. But as in the case of private persons, a mere error or excess does not vitiate an act for which there is lawful authority, unless the excess is so gross as to make the whole act unlawful ab initio; so, a *multo fortiori*, in cases of public officers acting *bona fide* in cases of great public peril and emergency, mere error or excess, unless so gross as to shew an utter absence of any real honest ground for the measures taken, would probably not involve any legal liability, and assuredly would not prevent a bill of indemnity. As the very object of proclaiming martial law is to allow of such measures of repression as may be required after overt acts of outrage have ceased, it would be worse than idle to restrict those measures within the rigid bound, of a manifest necessity. There is a scope for the exercise of martial law beyond manifest necessity, and so far as may be reasonable, under all the circumstances; that is, so far as might fairly and naturally be deemed reasonable by a military commander under such circumstances—not what lawyers, calmly judging, might deem reasonable. In other words, the measures taken must be such as that no person of any sense could, even under the circumstances which existed, have honestly or reasonably have supposed reasonable; for to tell a military man, who is exercising a power avowedly and necessarily one of arbitrary discretion, that he is to exercise it at the peril of legal liability, not only for gross and reckless severities, but for honest errors of judgment, would be, it is manifest, to paralyse the arm of the executive in moments of the utmost possible public peril; and in our own time we have seen the disastrous results of such a paralysis of military force at times of insurrection, such as occurred at Bristol and Birmingham. When once martial law has been proclaimed, it is of its very nature and essence, that, while it lasts, the military may take any measures they honestly deem necessary for the perfect repression of rebellion, and the restoration of order.

In entire accordance with this view are the judicial decisions of our own times.

Thus, in the leading case on the subject of martial law, it was laid down that even the delinquencies of soldiers, where they are *ordinary offences against the civil peace*, are tried by the common-law courts (*Grant v. Gould* (2 H. Bl. 101)); and though it is then said also that martial law does not exist in England, it is obvious, from the case and the context, that this was meant of *ordinary times*, not times of war, when martial law is proclaimed. It is said, "Where martial law is established, it is of a totally different nature from that which is inaccurately called martial law merely because the decision is by a court martial, but which bears no affinity to that which was formerly attempted to be exercised in this kingdom, which was contrary to the constitution, and which has been for a century wholly exploded." (Ib.) Now, it was, as we have seen, martial law in time of *peace*, which was so exploded as unconstitutional; and this is clear from what follows:—"It extends to a great variety of cases not relating to the discipline of the army—as plots against the Sovereign, *intelligence to the enemy*, and the like—are, all considered as cases within the cognisance of military authority," and may, therefore, be summarily tried, and punished even with death. So that it is recog-

nised, that by martial law, when it is established, acts other than those of actual violence may be summarily and capitally punished, even such acts as giving intelligence to the enemy. And although it is said that such martial law has no existence in England, it is obvious that this means no *ordinary* existence; and this must be the meaning of the passage in Stephen's *Blackstone* on the subject (vol. 2, p. 602, in notes), "Though our Sovereigns formerly exercised the right of proclaiming martial law within the kingdom, that prerogative seems to be now denied them by the Petition of Right." This must mean in *time of peace*, for the Petition of Right and the Mutiny Act so limit it; and therefore it all turns upon this—whether there was what might reasonably be deemed a state of war; as to which there are numerous authorities to shew that acts of force by an armed body of men, combined against the constituted authorities, and especially those representing the Crown, amount to levying of war; and illustrations have already been given, arising in our own times, of cases of this kind of domestic war or rebellion which would justify martial law.

Applying this doctrine to the case of Jamaica, we find that there was an armed and combined force, directed specifically and primarily against the constituted authorities, and especially against the custos of the county or parish (who answers well enough to our lord lieutenant of a county), and, moreover, acts of murder by this armed and combined force against those civilians and volunteers, who were lawfully assembled, under lawful authority, in a public capacity, and on a public occasion, pertaining to the government of the colony; and, further, we find other acts of felonious violence perpetrated by the same or a similar mob, at places considerably distant from the scene of the first outbreak; and we find that, under the general belief and impression of a wide-spread conspiracy to destroy the English inhabitants and the English rule, the governor, who is commander-in-chief, proclaimed martial law in the district, and continued measures of severe repression several days after the actual violence had ceased, ending with the summary trial and execution of a person *taken* in another district, but alleged to have been closely connected with the felonious and rebellious outrages committed in the district where he was so tried and executed. Now, as to this *removal* from the district where he was taken, to that where crime were committed, to which, it was alleged, he was privy, it comes to nothing (assuming such privy); for it is a maxim in law that "crime is local" (*Rafael v. Verelot*, 2 W. Bl. 983, 1055, 1063), and must be tried where it is committed, and by the law which there prevails. (Per Heath, J., *Mure v. Kay*, 4 Taunt. 43). Indeed, one main reason *why* the trial of crime is local is, that it may thus be tried by the law which there prevails; and thus if a man, by letter or message, in one county, counsels or incites to murder in another, he not only may, but must, be tried in the county where the murder is perpetrated (if he is tried for the *murder*, as he may be if he is a party to it, which he may well be though at a distance), although if he is tried for a conspiracy, he may be tried either where the conspiracy was entered into, or where the overt acts were committed. The case, therefore, would come, in substance, to this—whether there was any reasonable ground for proclaiming martial law in the district where he was tried, and for holding him to be connected with, and privy to, the murders there committed? As to the first, the mere belief in the existence of a wide-spread conspiracy for wholesale extermination of the whites, would justify the proclamation, if the belief was such as might reasonably be entertained; and the fact that such a belief was generally entertained, and affirmed by the legis-

lative authority, would of itself be *prima facie* evidence of its reasonableness. And the fact of felonious outrages by an armed and combined mob of a particular class and colour, with evidence of sympathy in the majority of persons of that class and colour, constituting a tremendous and overwhelming majority of the population, would likewise be *prima facie* proof of a necessity for proclaiming martial law. That being so, then any acts done in the usual and ordinary exercise of martial law, within a short and not unreasonable time after acts of outrage had ceased, would be justified; and, at all events, any error or excess, unless grossly and obviously unreasonable, would only be censurable by Parliament or the Crown. The argument here submitted seems strongly confirmed by the judgment of Lord Mansfield in the great case of *Moslyn v. Fabrigas* (Cowp. 170), where it was held, that an action of trespass (and, by parity of reasoning, an indictment) would lie against one who had been governor of a colony for acts committed there in his character as governor. It is curious, that one of the cases cited is that of a Governor of Jamaica, who was held liable, here, for an illegal and unjustifiable assault and false imprisonment, there (*Way v. Yelby*, 6 Mod. 195) Lord Mansfield lays down, that the action lies here for the very reason that it would not lie *there*; at all events, *during the defendant's government*. But he says, "I can conceive cases in *time of war*, in which a governor would be justified, though he acted very arbitrarily, in which he could not be justified in *time of peace*. Suppose, during a siege or invasion, upon a general suspicion, he should take up people as spies, upon proper circumstances, laid before the Court, it would be very fit to see whether he had acted as the governor of a colony ought, according to the circumstances of the case." Then, by the law of England, as has been seen, a rebellion is a case of war as much as an invasion. And the Mutiny Acts themselves recognise that, as is notorious, spies are, by the law military, liable to death. And a very similar illustration is given by the Court in the case of *Grant v. Gould* (2 H. Bl. 101), as to giving intelligence to the enemy. It seems clear, from these authorities, that supposing martial law proclaimed honestly, and in the belief of its necessity, by the governor of a colony, persons reasonably proved guilty of offences capitally punishable by martial law (among which are holding lawful correspondence with rebels), might be lawfully executed, supposing that, according to martial law, i.e. natural justice, they had a fair and honest trial.

We need hardly tell our legal readers, that by the common law of England, abundantly recognised by statute (vide 33 Hen. 8, c. 23), not only *may* persons who have committed crimes be brought to the place where they committed them for trial, but they *must* be; and further, that the illegality of an arrest cannot affect the legality of the trial; so that, even if they are illegally arrested in a distant place, they may nevertheless legally be tried where they committed the crime, and even although the offence were committed abroad, if on an English subject. (*Re v. Azoparde*, 1 Car. & M. 205). A British subject arrested abroad under a warrant upon an indictment for a misdemeanour, brought in custody to England, and there committed to prison, is not entitled to be discharged. (Per Lord Tenterden, C. J., and Parke, J.; *dubitante*, Littleale, J., *Ex parte Scott*, 4 Mau. & R. 361; 9 B. & Cr. 446). Where the crew of a Dutch ship had mastered the vessel and run away with her, and brought her into Deal, it was held that they might be seized and sent back to Holland. (*Mure v. Kay*, 4 Taunt. 43). So, again, we need not say to any lawyer that a man may even at common law be guilty of an offence in a place where he has not actually been, by bodily pre-

sence. This is often exemplified in cases of libel or conspiracy, especially such as are seditious in their character. A man may be indicted either where he writes the libel and sends it for publication, or where it is published by his direction—either where he forms the seditious or treasonable conspiracy, or where the overt acts are committed. This was exemplified, as regarded seditious libel, in the case of Sir F. Burdett, where, indeed, it was at first doubted whether a libel be triable in any county but that where the publication took place. (*Reg. v. Burdett, Bart.*, 3 B. & Al. 717; 4 B. & Al. 95). But it is now held, that where a defendant writes and composes a libel in one county, with an intent to publish, and afterwards publishes it in another, he may be indicted in either. (Ib.) And thus, where the letter was inclosed in an envelope, and received in the county of M. open, accompanied with written directions for publication, as expressed in the envelope, it was not doubted that this was evidence to go to a jury of a publication in M. So that Gordon could by the common law have been indicted in St. Thomas's for a seditious libel published there.

So, where the publisher of a public register received seditious letters, the letters themselves containing expressions of the writer indicative of his having sent them to the publisher of the register, for the purpose of publication, the whole is evidence sufficient for the jury to find a publication by the procurement of the defendant in the county where the letters were so received. (*Reg. v. Johnson*, 7 East, 65; 3 Smith, 94). So it was held, that an information at common law for a conspiracy for planning and fabricating false vouchers to cheat the Crown (which planning and fabrication were done upon the high seas), is well triable in England, upon proof there of the receipt of the false vouchers transmitted thither by one of the conspirators through the medium of the post, and the application there of a third person for payment, which he there received. (*Reg. v. Brisac*, and *Same v. Scott*, 4 East, 164). So that it is abundantly clear that Gordon could have been indicted at the common law in a district where any seditious letters of his were received; or where acts done, if any, in pursuance of any seditious conspiracy to which he was a party, were committed. And if the conspiracy were to counsel murder, or the letters were such as incited to murder, he could be indicted where the murders were committed.

It is hardly necessary to cite authorities to shew that even a mere riotous assembly may be dispersed with force. Thus, in our times, it has been laid down by a great judge, that it is not only lawful for magistrates to disperse an unlawful assembly, even when no riot has occurred, but if they do not do so, and are guilty of criminal negligence in not putting down an unlawful assembly, they are liable to be prosecuted for a breach of their duty. (*Reg. v. Neale*, 9 Car. & P. 431—Littledale, J.) And further, that the mode of dispersing an unlawful assembly may be very different according to the circumstances attending it in each particular case; and an unlawful assembly may be so far verging towards a riot, that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly; and there may be cases where the magistrates will be bound to use force to disperse an unlawful assembly. (Ib.) And it has been laid down that any assembly of persons, attended with circumstances calculated to excite alarm, is an unlawful assembly. (Ib.) So, it was held, that the stat. 7 & 8 Geo. 4, c. 30, s. 8, not having given any definition of what shall be a riot within the meaning of that enactment, the common-law definition of a riot must be resorted to; and in such a case if any one of her Majesty's subjects be terrified, this is a cause of terror and alarm to

substantiate that part of the charge. (*Reg. v. Langford*, 1 Car. & M. 602—Patteson, J., and held right by all the judges).

It is equally clear, that a person may be guilty of complicity in a riot, whether felonious or not, although he was not actually present; and although a riot is not necessarily felonious, and a man may be guilty of inciting to a riot, who is not necessarily guilty of felonious acts of violence, it is certainly a matter of evidence. Thus, if persons are assembled to the number of three or more, and speeches are made to those persons to excite and inflame them, with a view to incite them to acts of violence, and if that same meeting is so connected, in point of circumstances, with a subsequent riot, that you cannot reasonably sever the latter from the excitement that was used, those who excited are guilty of the riot, although they are not present when it occurs. (*Reg. v. Sharpe*, 3 Cox's C. C. 288; 12 L. T. 537—Wilde, J.) So, if a house be demolished by rioters by means of fire, one of the rioters who is present while the fire is burning may be convicted for the felonious demolition, under stat. 7 & 8 Geo. 4, c. 30, s. 8, although he is not proved to have been present when the house was originally set on fire. (*Reg. v. Simpson*, 1 Car. & M. 669—Tindal, C. J.) So, if in a case of feloniously demolishing a house by rioters, it appears that some of the prisoners set fire to the house itself, and that others did other acts on the outside of the house, it will be for the jury to say, whether the latter were not encouraging and taking part in a general design of destroying the house and furniture; and if so, the jury ought to convict them. (*Reg. v. Harris*, 1 Car. & M. 661—Tindal, C. J., Parke and Rolfe, JJ.) So, it is well known, that even according to the latest and most lenient version of the law of constructive homicide, a man may be guilty of a murder, although he was not actually and personally a party to it. Thus, where persons combine to stand by one another in a breach of the peace, with a general resolution to resist all opposers, and in the execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the fact some of them were at such a distance as to be out of view. (*Reg. v. Howell*, 9 Car. & P. 437—Littledale, J.) Thus, Gordon might have been guilty of murder at St. Thomas's, even although he was all the while at Kingston. If so, he would have been, even by the common law, triable at St. Thomas's, and by the law which there prevailed, which was martial law; and therefore, if there was any ground for martial law, and his trial was (as we may presume it was) fair, it was perfectly legal. And so of all other acts done honestly under military orders.

## REGULA GENERALIS.

### COUNTY COURTS EQUITABLE JURISDICTION.

THE following Order of Court has just been issued by the Lord Chancellor:—

"I, the Right Honourable Robert Monsey Baron Cranworth, Lord High Chancellor of Great Britain, do hereby, in pursuance and execution of the powers given by the stat. 28 & 29 Vict. c. 99, order that any suit or matter transferred from any County Court to the Court of Chancery, under the provisions of sect. 9 of the said statute, shall proceed in the Court of the Honourable the Vice-Chancellor Sir Richard Torin Kindersley.

"Dated the 23rd day of December, 1865.

"CRANWORTH, C."

## Court Papers.

NISI PRIUS SITTINGS, IN AND AFTER  
HILARY TERM, 1866.

## Court of Queen's Bench.

## In Term.

## MIDDLESEX.

1st sitting, Monday, Jan. 15  
2nd sitting, Friday ..... 19  
3rd sitting, Wednesday .. 24

## LONDON.

There will not be any sittings  
during term in London.

## After Term.

Thursday ..... Feb. 1 | Wednesday ..... Feb. 14

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

## Court of Common Pleas.

## In Term.

## MIDDLESEX.

Friday ..... Jan. 12  
Friday ..... 19  
Friday ..... 26

## LONDON.

The Court will not sit in  
London during term.

## After Term.

Thursday ..... Feb. 1 | Tuesday ..... Feb. 13

The Court will sit during and after term at ten o'clock.

## Exchequer of Pleas.

## In Term.

## MIDDLESEX.

1st sitting, Monday, Jan. 15  
2nd sitting, Monday .... 22  
3rd sitting, Monday .... 29

## LONDON.

The Court will not sit in  
London during term.

## After Term.

Thursday ..... Feb. 1 | Monday ..... Feb. 12

The Court will sit during and after term at ten o'clock.

The Court will sit in Middlesex, in term, by adjournment from day to day until the causes entered for the respective Middlesex sittings are disposed of.

COMMON-LAW CAUSE LISTS, HILARY TERM,  
1866.

## Court of Queen's Bench.

## NEW TRIALS.

## FOR JUDGMENT.

Leeds—Mayne v. Binns

## FOR ARGUMENT.

## Moved Easter Term, 1864.

Ches.—Hughes v. Birkenhead Improvement Commissioners (First action, to be argued with D. To stand over till decision in a similar point in court of error)

— Same v. Same (Second action, Ditto)

— Davies v. Same (Ditto)

## Moved Mich. Term, 1864.

Durham—Ecclesiastical Commissioners for England v. Peart

## Moved Easter Term, 1865.

Lancaster—Martin v. Smalley & an. (Stands for arrangement)

## Tried during Term.

Midd.—Edwards v. Parker & ors.

— Dordoy v. Johnson & an.

## Moved Trin. Term, 1865.

Derby—Cartwright & ors. v. Forman

Midd.—Watts & ors. v. Lewis  
— Sullivan v. Hayward

## Tried during Term.

Midd.—Double v. Sharp  
— Hazlitt v. Templeman

## Moved Mich. Term, 1865.

Midd.—Springett v. Balls  
— Feltham v. England  
Lond.—London, Brighton, & South-coast Railway Co. v. Williams

— Sandeman v. Scurr  
— Cleveland Iron Co. (Limited) v. Stephenson (To stand over until security for costs be given)

— Morgan v. Chetwynd

— Hibbs v. Ross

— Double v. Reynell

Lond.—Strong v. Berry

— Nash v. Hay

Surrey—Castrique v. Fraise

— County General Conservators Co. (Limited) v. Mare

— Chambers v. Reid

— Jeffs v. Day

Derby—Brough v. Lord

Scarsdale

Carmarthen—Williams & ors.

v. Evans

Cambridge—Kemp v. Waddingham & an.

Newcastle—Henderson & ors.

v. Whitfield

Lancaster—Bainbridge v.

Dobson

Manchester—Micklenberg v.

Gloyer

— Kelly v. Sherlock

Liverpool—Bates v. Hewitt

— Lunt v. London & North-western Railway Co.

## SPECIAL PAPER.

Those marked thus \* are Special Cases, and thus † Demurrers.

## FOR ARGUMENT.

† Hughes v. Birkenhead Improvement Commissioners (New Trial to be argued with this D., stands over)

† Same v. Same (Ditto)

† Davies v. Same (Ditto)

\* Bryant v. Foot

† Jolwald v. Continental Bank Corporation (Limited) (To stand over till issues in fact tried, &c.)

† Le Strange v. Rowe (Part heard, stands over till issues in fact are tried)

† Tydeman v. Carne (Stands over over till probate taken out)

† Hetherington v. Hicks (St. over till issues in fact are tried)

† Bewley v. Rugg (Stands over for arrangement)

† Ecclesiastical Commissioners for England v. Peart

† Keyes & ors. v. Edwards & ors. (Sp. C. to be stated)

\* Piper v. Reg. (Pet. of right)

\* Booth v. Parker

\* Foster v. Dodd

\* Taylor v. Shafto

† Donald v. Suckling

\* Greenwood v. Scragg

† Wensum Valley Railway Co. v. Great Eastern Railway Co.

\* Mee v. Parren & an.

† Bankart & an. v. Peckham

† Hewetson & an. v. Todd

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## CAP. I.

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[3rd March, 1865.]

## CAP. II.

An Act to extend the Powers now vested in Justices of the Peace to grant Licenses to deal in Game to the Divisional Magistrates within the Police District of Dublin Metropolis.  
[27th March, 1865.]

## CAP. III.

An Act for the Protection of Inventions and Designs exhibited at certain Industrial Exhibitions in the United Kingdom.  
[27th March, 1865.]

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2. Power to Board of Trade to certify that certain industrial exhibitions are entitled to the benefit of this act.

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## CAP. IV.

An Act to apply the sum of One hundred and seventy-five thousand six hundred and fifty Pounds out of the Consolidated Fund to the Service of the Year ending the 31st March, 1865.  
[27th March, 1865.]

## CAP. V.

An Act for the Incorporation of the Territories of British Kaffraria with the Colony of the Cape of Good Hope.  
[27th March, 1865.]

## CAP. VI.

An Act for the Protection of Inventions and Designs exhibited at the Dublin International Exhibition for the Year 1865.  
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## CAP. VII.

An Act to confirm a Provisional Order under the General Police and Improvement (Scotland) Act, 1862, relating to the Burgh of Perth.  
[7th April, 1865.]

## CAP. VIII.

An Act to amend the Election Petitions Act, 1848, in certain Particulars.  
[7th April, 1865.]

Sect. 1. *Committee to adjourn to day after the meeting of the House when House not sitting, and committee has occasion to report.*

2. *In case the House shall not sit, committee further to adjourn.*

3. *In certain cases the House may direct a committee to adjourn for a reasonable period.*

4. *If committee dissolved by any error, &c., a new committee shall be struck, unless the House shall otherwise order.*

5. *House may order a dissolved committee to be revived, and to reassemble and act.*

6. *As to sittings of revived committee.*

Whereas it is expedient to amend the Election Petitions Act, 1848 (hereinafter called the principal act), in certain

particulars hereafter mentioned: be it enacted &c., as follows:—

Sect. 1. If any select committee appointed under the principal act have occasion to apply to or report to the House, and the House be adjourned for more than twenty-four hours, such committee shall adjourn to the day immediately following that on which the House shall be appointed to meet for the dispatch of business, unless that day shall happen to be a Sunday, Christmas Day, or Good Friday, and in that case the committee shall adjourn to the next following day.

2. In case the House from any cause shall happen not to sit for the dispatch of business on the day appointed for that purpose, the committee shall again, and so from time to time, adjourn till after the House shall sit for the dispatch of business; but no adjournment shall be made for any longer period than to the day next after the day the House shall actually sit for the dispatch of business, unless such day shall happen to be a Sunday, Christmas Day, or Good Friday, and in that case the adjournment shall be to the next following day.

3. In case it shall become necessary to adjourn the consideration of any application or report made by any committee to the House, the House may, if it shall so think fit, direct the committee to adjourn their sitting again, and from time to time, and for such reasonable time as shall be sufficient to enable the House to decide on such application and report, and such committee shall adjourn accordingly.

4. If at any time after the appointment of a committee under the principal act it shall appear to the House that, from any error, irregularity of proceeding, oversight, or other cause, such committee has become dissolved, or unable to continue its sittings for any cause not provided for by the principal act, another committee shall be appointed to decide on the petition referred to such committee, unless the House shall otherwise order, within three sitting days, as hereinafter provided; and for the purpose of appointing such other committee, the general committee and the members of the chairmen's panel shall meet as soon as conveniently can be after the expiration of three sitting days from the time the occasion for such new committee shall be reported to or brought under the notice of the House by any member, at a day and hour to be appointed by the general committee; and notice of such meeting shall be published with the votes, and all the proceedings of such former committee shall be of no effect.

5. In all cases where a committee shall have become dissolved by any error, irregularity of proceeding, oversight, or other cause, not involving the death or permanent illness of any of its members, the House may, if it shall so think fit, within three sitting days after such event shall have been reported to or brought under the notice of the House by any member, order such committee to stand revived, and to meet and continue its sittings; and in such case no new committee shall be appointed, unless for any subsequent cause; and the proceedings of such new committee shall have the same force and effect and be as valid as if no such dissolution thereof had taken place.

6. A committee ordered to stand revived shall meet at the time mentioned in such order, and shall in its subsequent sittings and adjournments be regulated by all the provisions of the principal act and of this act.

## CAP. IX.

An Act to allow Affirmations or Declarations to be made instead of Oaths in all Civil and Criminal Proceedings in Scotland. [7th April, 1865.]

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2. Power to persons objecting to be sworn from alleged conscientious motives to make affirmation, &c.
3. Persons falsely affirming &c., to incur penalties of wilful perjury.
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An Act to apply the Sum of Fifteen Millions out of the Consolidated Fund to the Service of the Year 1865. [7th April, 1865.]

## CAP. XI.

An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters. [7th April, 1865.]

## CAP. XII.

An Act for the Regulation of Her Majesty's Royal Marine Forces while on Shore. [7th April, 1865.]

## CAP. XIII.

An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands Act (Ireland), 1863, and the Act amending the same. [7th April, 1865.]

## CAP. XIV.

An Act to make better Provision for the Naval Defence of the Colonies. [7th April, 1865.]

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3. Power for colonies to provide vessels, and raise men and commission officers, &c.
4. Volunteers to form part of royal naval reserve.
5. Power to Admiralty to issue special commissions.
6. Placing of colonial vessel, with men and officers, at her Majesty's disposal.
7. As to services of volunteers and officers in navy.
8. Delegation of Admiralty powers to naval officer.
9. Not to impose charge on imperial revenues, &c.
10. Not to affect powers vested in colonies.

## CAP. XV.

An Act to extend the Term for granting fresh Letters-patent for the High Courts in India, and to make further Provision respecting the Territorial Jurisdiction of the said Courts. [7th April, 1865.]

- Sect. 1. Extension of time for granting fresh letters-patent.
2. Sects. 10 and 18 of the 24 & 25 Vict. c. 104, repealed.
3. Power to the Governor-General in Council to alter local limits of jurisdiction of high courts.
4. Power to Crown to disallow any order of the Governor-General for that purpose.
5. Time when act shall come into operation.
6. Not to interfere with certain powers of Governor-General.

## CAP. XVI.

An Act to make further Provision for the Management of the Unredeemed Public Debt in Ireland, and for the Reduction of the Interest payable on certain Sums advanced by the Bank of Ireland for the Public Service. [7th April, 1865.]

- Sect. 1. From the 6th April, 1865, certain provisions of the 8 & 9 Vict. c. 37, repealed.
2. Interest payable to Bank of Ireland.
3. From the 6th April, 1865, interest on the debt to the Bank of Ireland to be reduced to 3/ per cent. per annum.
4. As to future payment to the Bank of Ireland for management of the public debt in Ireland.
5. Commissioners of National Debt to transmit to Treasury statement of the amount of the debt in Ireland, and allowance for management to be computed thereon.

## CAP. XVII.

An Act to enlarge the Powers of the Governor-General of India in Council at Meetings for making Laws and Regulations, and to amend the Law respecting the Territorial Limits of the several Presidencies and Lieutenant-Governorships in India. [9th May, 1865.]

- Sect. 1. *Power to Governor-General to make laws for all British subjects, whether in service of Government of India or otherwise.*
2. *Preceding section to be read as part of sect. 22 of recited act.*
3. *Sect. 18 of the 16 & 17 Vict. c. 95, repealed.*
4. *Power to Governor-General to appoint territorial limits of presidencies, &c. by proclamation.*
5. *Power to Secretary of State in Council to signify disallowance of such proclamation.*

Whereas, by an act passed in the session holden in the 24 & 25 Vict. c. 67, it was, among other things, enacted, that the Governor-General of India in Council shall have power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons, whether British or native, foreigners or others, within the Indian territories under the dominion of her Majesty, and for all servants of the Government of India within the dominions of princes and States in alliance with her Majesty: and whereas it is expedient to enlarge the said power by authorising the Governor-General of India in Council to make laws and regulations for all British subjects of her Majesty within the dominions of such princes and states: be it enacted &c., as follows:—

- Sect. 1. The Governor-General of India shall have power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of her Majesty within the dominions of princes and states in India in alliance with her Majesty, whether in the service of the Government of India or otherwise.
2. The preceding section shall be read with, and taken as part of, sect. 22 of the said act of the 24 & 25 Vict. c. 67.
3. And whereas it is expedient to amend the law respecting the territorial limits of the several presidencies and lieutenant-governorships in India: sect. 18 of the act of the 16 & 17 Vict. c. 95, intitled "An Act to provide for the Government of India," is hereby repealed.
4. It shall be lawful for the Governor-General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of her Majesty shall be or continue subject to each of the presidencies and lieutenant-governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such presidencies and lieutenant-governorships as to the said Governor-General in Council may seem expedient.
5. Provided always, that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any such proclamation: and provided further, that no such proclamation for the purpose of transferring an entire zillah or district from one presidency to another, or from one lieutenant-governorship to another, shall have any force or validity until the sanction of her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

## CAP. XVIII.

An Act for amending the Law of Evidence and Practice on Criminal Trials. [9th May, 1865.]

- Sect. 1. *Provisions of sect. 2 of this act to apply to trials commenced on or after the 1st July, 1865.*
2. *Summing up of evidence in cases of felony and misdemeanour.*
3. *How far witness may be discredited by the party producing.*
4. *As to proof of contradictory statements of adverse witness.*
5. *Cross-examinations as to previous statements in writing.*
6. *Proof of previous conviction of witness may be given.*
7. *As to proof by attesting witnesses.*

8. *As to comparison of disputed writing.*

9. "*Counsel.*"

10. *Not to apply to Scotland.*

Whereas it is expedient that the law of evidence and practice, on trials for felony and misdemeanour and other proceedings in courts of criminal judicature, should be more nearly assimilated to that on trials at Nisi Prius: be it enacted &c., as follows; that is to say,

Sect. 1. That the provisions of sect. 2 of this act shall apply to every trial for felony or misdemeanour which shall be commenced on or after the 1st July, 1865, and that the provisions of sections from 3 to 8 inclusive, of this act shall apply to all courts of judicature, as well criminal as all others, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

2. If any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanour, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening, or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded, to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present.

3. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

4. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

5. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the indictment or proceeding, without such writing being shewn to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of 5s. and no more shall be demanded

or taken), shall, upon proof of identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

7. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

8. Comparison of a disputed writing with any writing, proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

9. The word "*counsel*" in this act shall be construed to apply to attorneys in all cases where attorneys are allowed by law, or by the practice of any court, to appear as advocates.

10. This act shall not apply to Scotland.

#### CAP. XIX.

An Act to extend the Period for borrowing the Sum authorised to be raised under the Metropolitan Main Drainage Extension Act, 1863.  
[9th May, 1865.]

Sect. 1. Extension of time for borrowing powers to the 31st December, 1867.

2. Construction of this act and the Main Drainage Acts.

#### CAP. XX.

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.  
[9th May, 1865.]

#### CAP. XXI.

An Act to amend the Irish Bankrupt and Insolvent Act, 1857.  
[9th May, 1865.]

Sect. 1. *No railway company incorporated by Parliament liable to be made bankrupt under the 20 & 21 Vict. c. 60.*

2. *Not to affect any adjudication of bankruptcy already made.*

3. *Short title.*

4. *To extend to Ireland only.*

Whereas it is expedient to provide that railway companies incorporated by act of Parliament shall not be liable to be adjudicated bankrupt: be it therefore enacted &c., as follows:—

Sect. 1. From and after the passing of this act, no railway company incorporated by act of Parliament shall be liable to be made bankrupt under the the Irish Bankrupt and Insolvent Act, 1857, and the provisions of the said act which relate to the bankruptcy of joint-stock companies shall not apply to railway companies so incorporated as aforesaid.

2. Nothing herein contained shall affect any adjudication of the bankruptcy of any such railway company made or to be made on any petition for adjudication presented on or before the 1st April, 1865, or the proceedings thereunder; it being, however, hereby declared, that no person, company, or body corporate, by reason of his or their being a shareholder or shareholders of any railway company made bankrupt under any such adjudication of bankruptcy, is or shall be liable to pay or contribute any sum beyond the extent of his or their shares in the capital of the company not paid up at the time of such adjudication.

3. This act may be cited for all purposes as "*The Irish Bankrupt and Insolvent Amendment Act, 1865.*"

4. This act shall extend to Ireland only.

#### CAP. XXII.

An Act to amend the Acts relating to the Scottish Herring Fisheries.  
[9th May, 1865.]

Sect. 1. Sect. 4 of the 23 & 24 Vict. c. 92, repealed.

2. Not lawful to fish for herrings from the 1st February to the 31st May, between Ardnamurchan and the Mull of Galloway.

## CAP. XXIII.

An Act to confirm a Provisional Order under the Land Drainage Act, 1861. [9th May, 1865.]

## CAP. XXIV.

An Act to confirm certain Provisional Orders under the Local Government Act, 1858, relating to the Districts of Bridlington, Brighouse, Burnley, Henley, Shipley, Wallingford, Llangollen, Ormskirk, Swansea, Tormoham, and Lockwood. [9th May, 1865.]

## CAP. XXV.

An Act to confirm certain Provisional Orders under the Local Government Act, 1858, relating to the Districts of Derby, Ramsgate, Oswestry, Bury, Heap, Cockermouth, Matlock Bath, and Bromsgrove. [9th May, 1865.]

## CAP. XXVI.

An Act to provide for Superannuation Allowances to Officers of Unions in Ireland. [26th May, 1865.]

Sect. 1. Power to guardians, with consent of Poor-law Commissioners, to grant superannuation allowances to officers in certain cases.

2. Such allowances not to be assignable, &c.
3. Limitation of grants of allowances.
4. Notice of grant to be given to guardians.
5. Interpretation of words herein used.

## CAP. XXVII.

An Act for awarding Costs in certain Cases of Private Bills. [26th May, 1865.]

- Sect. 1. *Where committee report "preamble not proved," opponents to be entitled to recover costs.*
2. *When committee report unanimously "opposition unfounded," promoters to be entitled to recover costs. Proviso.*
3. *Costs to be taxed.*
4. *Powers of taxing officer.*
5. *Recovery of costs when taxed.*
6. *Form of action in Scotland.*
7. *Persons paying costs may recover a proportion from other persons liable thereto.*
8. *When committee report "preamble not proved," promoters to pay costs out of deposits.*
9. *Definition of promoters.*
10. *Meaning of private bill.*
11. *Commencement of act.*

Whereas it is expedient to empower committees of both Houses of Parliament on private bills to award costs in certain cases: be it enacted &c., as follows:—

Sect. 1. When the committee on a private bill shall decide that the preamble is not proved, or shall insert in such bill any provision for the protection of any petitioner, or strike out or alter any provision of such bill for the protection of such petitioner, and further unanimously report, with respect to any or all of the petitioners against the bill, that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the bill, such petitioner or petitioners shall be entitled to recover from the promoters of such bill his or their costs in relation thereto, or such portion thereof as the committee may think fit; such costs to be taxed by the taxing officer of the House as hereinafter mentioned, or the committee may award such a sum for costs as they shall think fit, with the consent of the parties affected.

2. When the committee on a private bill shall decide that the preamble is proved, and further unanimously report that the promoters of the bill have been vexatiously subjected to expense in the promotion of the said bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the committee shall think fit, such portion of their costs of the promotion of the bill as the committee may think fit; such costs to be taxed by the taxing officer of the House as hereinafter mentioned, or such a sum for costs as the committee shall name, with the consent of parties affected; and in their report to the House the committee shall state what portion of the costs, or what sum for costs, they shall so

think fit to award, together with the names of the parties liable to pay the same, and the names of the parties entitled to receive the same: provided always, that no landowner who bonâ fide at his own sole risk and charge opposes a bill which proposes to take any portion of the said petitioner's property for the purposes of the bill, shall be liable to any costs in respect of his opposition to such bill.

3. On application made to the taxing officer of the House by such promoters or petitioners, or by their solicitors or parliamentary agents, not later than six calendar months after the report of such committee, and in cases where no sum shall have been named by the committee, with the consent of the parties affected, not until one month after a bill of such costs shall have been delivered to the party chargeable therewith, which bill shall be sealed with the seal or subscribed with the proper hand of the parties claiming such costs, or of their solicitor or parliamentary agent, the taxing officer shall examine and touch such costs, and shall deliver to the parties affected, or either or any of them, on application, a certificate signed by himself expressing the amount of such costs, or in cases where a sum for costs shall have been named by the committee, with the consent as aforesaid, such sum as shall have been so named, with the name of the party liable to pay the same, and the name of the party entitled to receive the same, and such certificate shall be conclusive evidence as well of the amount of the demand as of the title of the party therein named to recover the same from the party therein stated to be liable to the payment thereof; and the party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

4. All powers given to the taxing officer by the acts the 10 & 11 Vict. c. 60, and the 12 & 13 Vict. c. 78, with reference to the examination of parties and witnesses on oath, and with reference to the production of documents, and with reference to the fees payable in respect of any taxation, shall be vested in the taxing officer for the purposes of this act.

5. The party entitled to such taxed costs, or such sum named by the committee, with such consent as aforesaid, or his executors or administrators, may demand the whole amount thereof, so certified as above, from any one or more of the persons liable to the payment thereof, and in case of non-payment thereof on demand, may recover the same by action of debt in any of her Majesty's courts of record at Westminster or Dublin, or by action in the Court of Session in Scotland. In such action it shall be sufficient, in England or Ireland, for the plaintiff to declare that the defendant is indebted to him in the sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate and an affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by nil dicit, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to the due course of law: provided always, that the validity of such certificate shall not be called in question in any court.

6. In such action it shall be sufficient, in Scotland, for the pursuer to allege that the defender is indebted to him in the sum mentioned in the said certificate, under the like proviso in regard to the validity of the certificate.

7. In every case it shall be lawful for any person from whom the amount of such costs or sum named by the committee, with consent as aforesaid, has been so recovered, to recover from the other persons, or any of them, who are liable to the payment of such costs or sum named by the committee, with consent as aforesaid, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

8. In any case in which the committee shall have reported that the preamble is not proved, and where in accordance with the Standing Orders of either House of Parliament, and of an act of the 9 Vict. c. 20, a deposit of money or stock is made with respect to the application to Parliament for an act, the money or stock so deposited shall be a security for the payment by the promoters of the bill for the act of all costs or sums in respect of costs, if any, payable by them under this act: and every party entitled to receive any costs or sum so payable shall accordingly have a lien available in equity for the same on the money or stock so deposited, and the lien shall attach thereon at the time when the bill is first referred to a committee of either House of Parliament: pro-

vided, that where several parties have the lien for an amount exceeding in the aggregate the net value of the money or stock, their respective claims shall proportionably abate.

9. When a bill is not promoted by a company already formed, all persons whose names shall appear in such bill as promoting the same, and in the event of the bill passing the company thereby incorporated, shall be deemed to be promoters of such bill for all the purposes of this act.

10. For the purposes of this act, the expression "private bill" shall extend to, and include, any bill for a local and personal act.

11. That this act shall not take effect before the 1st November, 1865.

CAP. XXVIII.

An Act to authorise certain Payments out of the Land Revenues of the Crown to provide Compensation for certain Claims in the Isle of Man. [26th May, 1865.]

CAP. XXIX.

An Act for raising the Sum of One Million Pounds by Exchequer Bonds for the Service of the Year 1865. [26th May, 1865.]

CAP. XXX.

An Act to grant certain Duties of Customs and Inland Revenue. [26th May, 1865.]

Sect. 1. *Grant of duties specified in schedules annexed.*

2. *Provisions of former acts to apply to this act.*

3. *The sums assessed to the income tax under Schedules (A.) and (B.) for the year 1864 to be taken as the annual value for assessment under this act.*

4. *Assessors not to be appointed for duties under Schedules (A.) and (B.)*

5. *Power to increase number of commissioners for general purposes in certain cases.*

6. *No reduction to be made unless profits of the year are proved less than the average of last three years.*

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto your Majesty the several rates and duties hereinafter mentioned; and do therefore most humbly beseech your Majesty that it may be enacted; and be it enacted &c., as follows:—

Sect. 1. There shall be charged, collected, and paid, for the use of her Majesty, her heirs and successors, the several rates and duties of customs and inland revenue respectively specified and contained in the several schedules marked respectively (A.), (B.), and (C.) to this act annexed; and the said rates and duties shall respectively take effect at or from the respective times, and shall continue to be charged, collected, and paid for and during the periods respectively specified or mentioned in that behalf in the said schedules respectively, and where no period is specified or limited for the duration thereof, the same shall continue to be charged, collected, and paid respectively until Parliament shall otherwise order; and the said several schedules shall be deemed to be part of this act.

2. All the powers, provisions, clauses, regulations, allowances, and exemptions, forfeitures, pains, and penalties, contained in or imposed by any act or acts, or any schedule thereto, relating to any duties of the same kind or description as the several rates or duties granted by this act respectively, and in force at the time of the passing of this act, and not hereby expressly repealed, or, as regards the income tax, in force on the 5th April, 1865 (except as hereinafter provided), shall respectively be in full force and effect with respect to the said rates and duties by this act granted respectively, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said last-mentioned rates and duties respectively, and otherwise in relation thereto, so far as the same shall not be superseded

by, and shall be consistent with, the express provisions of this act, as fully and effectually, to all intents and purposes, as if the same had been herein repeated and specially enacted, mutatis mutandis, with reference to the rates and duties by this act granted respectively: provided always, that for the purposes of this act the year 1863, mentioned in the 43rd section of the act passed in the 25 Vict. c. 22, shall be read as and deemed to mean the year 1865.

3. The sum charged as the annual value or amount of any property, profits, or gains in the several and respective assessments of income tax made in pursuance of the act passed in the 27 Vict. c. 18, under Schedules (A.) and (B.) respectively of the act passed in the 16 & 17 Vict. c. 34, for the year ended on the 5th April, 1865, shall (except as to railways and otherwise as provided by the acts relating to income tax) be taken as the annual value or amount of such property, profits, or gains respectively for the year commencing on the 6th April, 1865, and the duties of income tax granted by this act, and chargeable under the said schedules respectively, shall be computed, assessed, and charged according to such annual value or amount; and the commissioners executing the Income Tax Acts shall, for each place within their several and respective districts, cause duplicates of the assessments of the said duties so computed, assessed, and charged under the said Schedules (A.) and (B.) for the said last-mentioned year to be made out and delivered, together with warrants for collecting the same; and in England the said commissioners shall appoint such persons, being inhabitants of the place to which the duplicate shall relate, as they, the said commissioners shall think fit, to be collectors of the duties thereby charged, in like manner as if such persons had been presented to them by assessors under the acts now in force: provided always, that the said assessments shall be subject to be increased in like manner as the assessments made for the year ended on the 5th April, 1865, and subject also to be abated or discharged at the end of the year commencing on the 6th April, 1865, for any cause allowed by the said acts: provided that whenever it shall appear that any property, profits, or gains chargeable under the said Schedules (A.) and (B.) respectively have not been charged by the assessments made for the year ended on the 5th April, 1865, such property, profits, and gains shall be assessed to the duties of income tax granted by this act under the provisions of the said several acts applicable thereto.

4. No assessors shall be appointed for the duties payable under the said Schedules (A.) and (B.), but the inspectors or surveyors of taxes shall act as assessors in respect of such duties whenever it shall be necessary; and in lieu of the poundage granted by the 183rd section of the 5 & 6 Vict. c. 35, to be divided between the assessors and collectors in regard to the duties which shall be collected under the said Schedules (A.) and (B.), there shall be paid a poundage of 1d. to the collectors of the said duties.

5. Whereas by sect. 4 of the act passed in the 5 & 6 Vict. c. 35, provision is made for choosing and appointing persons to be commissioners for the execution of the Income Tax Acts in Great Britain, and the number of persons so to be appointed is limited to seven persons appointed commissioners for the general purposes of the said acts, and seven to supply vacancies amongst such commissioners, in each district or division, and it is necessary to increase the number of such commissioners and persons respectively in certain cases: be it enacted, that whenever it shall appear to the Board of Inland Revenue that the number of persons so appointed, or to be appointed, for any district, division, or place in Great Britain is insufficient for the proper discharge of the business arising under this act, the Board shall authorise the increase of the number of persons to be chosen commissioners for general purposes for such district, division, or place to any number not exceeding fourteen, and of persons to supply vacancies amongst such commissioners to any number not exceeding fourteen, and such persons shall respectively be appointed and chosen according to the regulations contained in the said enactment.

6. And whereas by sect. 133 of the said act of the 5 & 6 Vict. [c. 35], provision is made for giving relief, by reduction of the assessment, for repayment of duty in certain cases where the profits of the year of assessment fall short of the sum on which the assessment has been made: be it enacted, that no such reduction or repayment shall be made in any such case unless the profits of the said year of assessment are



proved to be less than the profits for one year on the average of the last three years, including the said year of assessment; nor shall any such relief extend to any greater amount than the difference between the sum on which the assessment has been made and such average profits for one year as aforesaid.

### SCHEDULES.

#### SCHEDULE (A.)

##### *Containing the Duty of Customs granted by this Act.*

In lieu of the duties of customs now charged on tea, the following duties of customs shall, on and after the 1st June, 1865, until the 1st August, 1866, be charged thereon, on the importation thereof into Great Britain and Ireland; (that is to say),

Tea, the lb. . . . . £0 0 6

#### SCHEDULE (B.)

##### *Containing the Stamp Duties granted by this Act on Fire Insurance.*

In lieu of the duties now payable in respect of insurances against loss or damage by fire only, there shall be charged, collected, and paid the following duties; (that is to say),

For and upon every policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall, on and after the 25th June, 1865, be made of or upon any building, goods, wares, merchandise, or other property, from loss or damage by fire only, the duty of 1*d.* :

And for and upon any note or memorandum given as a receipt on the deposit of any sum of money preparatory to the making out or issuing of any such policy as aforesaid, the duty of 1*d.* :

And for and in respect of every such insurance as aforesaid which shall be made, or continued or renewed, on or after the said 25th June, 1865, a duty of 1*s.* 6*d.* for every 100*l.* insured for a year, and at and after that rate for any fractional part of 100*l.* insured, and for any fractional part of a year, as well as for any number of years for which the insurance shall be made, or continued or renewed; but no fraction of 1*d.* shall be charged; and when any such insurance as aforesaid shall be made or renewed at any time between the 27th April, 1865, and the said 25th June, for any period of time extending beyond the said last-mentioned day, there shall be charged and paid for and in respect of the time intervening between the making or renewing of the said insurance and the said 25th June, the yearly percentage duty, at and after the rate chargeable on the said 27th April, and for and in respect of any subsequent period, including the said 25th June, the rate of duty chargeable according to this act; and no return or allowance of duty, except at and after the last-mentioned rate, shall be made, in respect of time unexpired or otherwise, on any such insurance as aforesaid, which shall have been made or renewed before the said 27th April, 1865.

#### SCHEDULE (C.)

##### *Containing the Rates and Duties of Income Tax granted by this Act.*

For one year commencing on the 6th April, 1865, for and in respect of all property, profits, and gains mentioned or described as chargeable in the act passed in the 16 & 17 Vict. c. 34, for granting to her Majesty duties on property arising from property, professions, trades, and offices, the following rates and duties shall be charged; (that is to say),

For every 20*s.* of the annual value or amount of all such property, profits, and gains (except those chargeable under Schedule (B.) of the said act), the rate or duty of 4*d.* :

And for and in respect of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said act, for every 20*s.* of the annual value thereof—

In England the rate or duty of 2*d.* :

And in Scotland and Ireland respectively the rate or duty of 1½*d.* :

Subject to the provisions contained in sect. 3 of the 26 Vict. c. 22, for the exemption of persons whose whole income from every source is under 100*l.* a year, and relief of those whose income is under 200*l.* a year.

#### CAP. XXXI.

An Act to enable the Commissioners of Her Majesty's Works and Public Buildings to acquire additional Lands for improving the Site of the new Public Offices in Downing-street, and the Approaches thereto. [2nd June, 1865.]

#### CAP. XXXII.

An Act to enable the Secretary of State in Council of India to acquire additional Lands for improving the Site of the India Office, and the Approaches thereto.

[2nd June, 1865.]

#### CAP. XXXIII.

An Act to repeal the Act of the Parliament of Ireland, of the 6 Ann. c. 11, for explaining and amending the several Acts against Tories, Robbers, and Rapparees.

[2nd June, 1865.]

Sect. 1. *The 6 Ann. c. 11 (I.), &c. repealed.*

2. *Grand juries not to present persons as vagrants.*

3. *Short title.*

4. *Sect. 7 of the 50 Geo. 3, c. 102, repealed.*

Sect. 1. The Irish act of the 6 Ann. c. 11, for explaining and amending two several acts against tories, robbers, and rapparees, and so much of any act or acts as revives or makes perpetual the same, are hereby repealed.

2. From and after the passing of this act, it shall not be lawful for any grand jury to present any person in Ireland as a vagrant, any statute to the contrary notwithstanding.

3. This act to be called "The Vagrancy (Ireland) Amendment Act, 1865."

4. The 7th section of the 50 Geo. 3, c. 102, is hereby repealed.

#### CAP. XXXIV.

An Act to make the Metropolitan Houseless Poor Act perpetual.

[2nd June, 1865.]

Sect. 1. *Provisions of recited act extended to relief after Lady-day, 1865. Sect. 6 repealed.*

2. *Poor-law Board to have wards inspected, and may revoke and renew certificate.*

3. *Allowance may be made for providing wards.*

4. *Power to police to provide for temporary relief.*

5. *Hours during which wards shall be open for admission.*

6. *Short title.*

Whereas it is expedient that the provisions of the Metropolitan Houseless Poor Act, 1864, should be made perpetual: be it therefore enacted &c., as follows:—

Sect. 1. That the provisions of the said act shall be extended to the expenditure for relief of destitute wayfarers, wanderers, and foundlings, or other destitute persons, in the several unions and parishes referred to in the said act, relieved and to be relieved from and after Lady-day, 1865; and the 6th section of the said act is hereby repealed.

2. The Poor-law Board shall from time to time cause the wards and other places of reception provided according to the said act to be inspected not less than once in every four months between the hours of six o'clock in the evening and eight in the morning in the months between October and March inclusive, and between the hours of eight o'clock in the evening and eight in the morning in the months between April and September inclusive; and the results of such inspections shall be reported to the Poor-law Board, who may at any time revoke and renew the certificates granted or to be granted under the 1st section of that act.

3. The said board may allow for the costs and expenses referred to in the 4th section of that act, when they shall see fit to do so, a sum or several sums in gross instead of a sum in respect of each pauper as therein provided.

4. Any constable of the metropolitan police or of the police of the city of London may personally conduct any destitute wayfarer, wanderer, or foundling, or other destitute person, not having committed or being charged with any offence punishable by law, within the knowledge of such constable, to any wards or other places of reception approved of by the Poor-law Board under the said act or this act; and every such wayfarer, wanderer, or foundling shall, if there be room in such wards or other places of reception, be temporarily relieved therein.

5. The wards or places of reception provided under the said act shall be open for the admission of destitute wayfarers, wanderers, and foundlings, or other destitute persons, who shall apply to be admitted during the hours between six o'clock in the evening and eight in the morning in the months between October and March inclusive, and during the hours between eight o'clock in the evening and eight o'clock in the morning in the months between April and September inclusive, and the guardians shall be entitled to be reimbursed for all the relief administered in conformity within the provisions of that act during those hours respectively.

6. This act may be cited for all purposes as "The Metropolitan Houseless Poor Act, 1865."

#### CAP. XXXV.

An Act to amend the Law relating to the Police Superannuation Funds in Counties and Boroughs.

[2nd June, 1865.]

Sect. 1. Short title.

2. Short titles of certain Police Acts.

3. Amendment of sect. 11 of the 3 & 4 Vict. c. 88, sect. 10 of the 19 & 20 Vict. c. 69, and sects. 9 and 10 of the 22 & 23 Vict. c. 39.

4. Head constable included in provisions of the 22 & 23 Vict. c. 32.

5. Nothing to prevent dismissals without retiring allowances. *Proviso.*

6. Parts of Lincolnshire to be one county for purposes of service in police, so long as county continues under one chief constable.

7. Appointment of joint committees.

8. Consequences of police force in county of Lincoln ceasing to be under one chief constable.

9. As to superannuation of constables formerly watchmen of Brighton under the 6 Geo. 4, c. clxxix.

#### CAP. XXXVI.

An Act to amend the Law relating to the Registration of County Voters, and to the Powers and Duties of Revising Barristers in certain Cases.

[2nd June, 1865.]

Sect. 1. Short title.

2. Clerk of peace to deliver precept to overseers of poor on or before the 10th June in every year.

3. Overseers to publish register.

4. 20th August last day for giving notices of objection.

5. 1st September last day for delivery of papers to clerk of peace.

6. Grounds of objection to be specified in notice.

7. Person objected to only required to give evidence in support of his right to vote &c.

8. Each ground of objection to be treated by revising barrister as a separate objection.

9. Sect. 100 of principal act to apply to objections.

10. Persons changing their place of abode, and persons objected to, may make declarations.

11. Penalty for falsely signing such declaration.

12. As to time for revision of county lists.

13. Orders for costs.

14. Such costs in no case to exceed 5l.

15. Revising barrister to read out names expunged and inserted.

16. Power to remove persons from court who interrupt proceedings.

17. Interpretation of terms.

Whereas it is expedient to amend an act passed in the session of Parliament holden in the 6 & 7 Vict. [c. 18], intituled "An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of Voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales," so far as relates to the registration of county voters, and to the powers and duties of revising barristers: be it enacted &c., as follows:—

Sect. 1. This act may be cited as "The County Voters Registration Act, 1865," and shall be construed with, and as part of, the said recited act, hereinafter termed "The Principal Act."

2. The clerk of the peace shall, on or before the 10th June in every year, make and cause to be delivered to the over-

seers of the poor of every parish and township within his county his precept according to the Form No. 1 in Schedule (A.) to this act, instead of the precept numbered 1 in Schedule (A.) to the principal act, together with the forms of notices, list, and copies of register in the principal act mentioned.

8. The clerk of the peace of every county shall, together with the precept, transmit to the overseers of every parish or township within such county a sufficient number of copies of the part or parts of the register relating to such parish or township; and the overseers of the poor of every parish and township shall, on or before the 20th June in every year, and at the same time with the publication of the notice mentioned in the 4th section of the principal act, publish a copy of the register then in force relating to their parish or township, and shall remove the same after a period including two Sundays at least, and not later than the 20th July.

4. The 20th August shall be the last day for giving notices of objection to the overseers and to the person objected to; and the 7th section of the principal act shall be read as if the word "twentieth" had been substituted therein for the word "twenty-fifth."

5. The 1st September shall be the last day for the delivery, by the overseers to the clerk of the peace, of the papers mentioned in the 9th section of the principal act; and such section shall be read as if the words "first day of September" had been substituted therein for the words "twenty-ninth day of August."

6. Any notice of objection to any person on the list of claimants for any parish or township may be given according to the provisions of the 7th section of the principal act, but, with that exception, no notice of objection given under the provisions of the said 7th section, other than a notice to the overseers, shall be valid, unless the ground or grounds of objection be specifically stated therein; and this provision shall be deemed to be sufficiently satisfied by naming the column or columns of the list on which the objector grounds his objection: provided always, that if the objection be grounded on the third column, then it shall be necessary to state in the notice whether the objection relates to the nature of the voter's interest in the qualifying property, or to the value of the qualifying property, or to both; and each of such last-mentioned grounds of objection shall be deemed a separate ground of objection, as well as any objection grounded on any one of the other columns; and such last-mentioned notice may be according to the form numbered 2 in Schedule (A.) to this act, or to the like effect, in substitution for the form numbered 5 in Schedule (A.) to the principal act.

7. No person objected to under the provisions of this act shall be required to give evidence before the revising barrister in support of his right to be registered, otherwise than as such right shall be called in question in such ground or grounds of objection.

8. Every separate ground of objection shall be treated by the revising barrister as a separate objection; and for every ground of objection which, in the opinion of the revising barrister, shall have been groundlessly or frivolously and vexatiously stated in a notice of objection, he shall, on the application of the person objected to, or any one on his behalf, and upon production of the notice of objection, award costs against the objector to the amount at least of 2s. 6d., and this though the name of the person objected to be expunged upon some other ground of objection stated in the same notice of objection.

9. The provisions of the 100th section of the principal act shall apply to notices of objection given under the provisions of this act.

10. Any person whose name appears on the list of voters then in force, and whose then place of abode is not correctly stated in the said list, or who shall have received a notice of objection grounded on the second column of the list, and who shall have possessed on the last day of July the same qualifications in respect of which his name has been inserted on the list, may, if he think fit, make and subscribe a declaration before any justice of the peace, or any commissioner or other person authorised to administer oaths in any of her Majesty's superior courts at Westminster, in the form contained in Schedule (B.) to this act, or to the like effect; and all such declarations shall be duly dated, and shall, on or

before the 14th September, be transmitted to the clerk of the peace; and it shall be the duty of the clerk of the peace to indorse on every such declaration the name of the polling district, and of the parish or township in which the qualification to which the declaration relates is situate, and the name of the person making the declaration, and also the date on which he has received the same, and to affix his initials to such last-mentioned indorsement, and to deliver all such declarations to the revising barrister at his first court, arranged under the heads of the several polling districts, according to the alphabetical order of the parishes and townships; and every revising barrister shall, for the purpose of correcting the statement in the list of the place of abode of such person, receive any such declaration as evidence, to be used in court at the proper time, if transmitted to the clerk of the peace on or before such last-mentioned day, of which the indorsement in that behalf by the clerk of the peace shall be *prima facie* proof, and if purporting to be subscribed before a justice of the peace, or commissioner, or other person authorised as aforesaid, without proof of the signature of the person subscribing the same, or of the justice, commissioner, or person before whom the same purports to have been subscribed, unless he shall have good reason to doubt the genuineness of any signature thereto; and all such declarations may be perused by any person at the office of the clerk of the peace, without payment of any fee, at any time between the hours of ten of the clock in the forenoon, and four of the clock in the afternoon of any day, except Sunday, before the 20th September; and the clerk of the peace shall deliver copies of any such declaration to all persons applying for the same, on payment of the price of 4d. per folio of seventy-two words.

11. Any person falsely or fraudulently signing any such declaration in the name of any other person, whether such person shall be living or dead, and every person transmitting as genuine any false or falsified declaration, knowing the same to be false or falsified, and any person knowingly and wilfully making any false statement of fact in such declaration, shall be guilty of a misdemeanour, and punishable by fine or imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound any such declaration.

12. No court shall be holden by a revising barrister for the revision of the lists of any county before the 20th September in any year.

13. Every order for costs by a revising barrister, whether revising the lists of a county, city, or borough, in the case of any objection, shall be made before his proceeding to hear any objection stated in any other notice of objection, and such order may be delivered either to the person to whom the costs shall therein be ordered to be paid, or to some other person on his behalf: provided always, that this section shall not be taken to repeal the last proviso contained in the 46th of the principal act.

14. The sum ordered to be paid by way of costs shall not upon any one vote exceed the sum of 5*l.*, and the 46th section of the principal act shall be read as if the words "five pounds" had been substituted therein for the words "twenty shillings."

15. It shall be the duty of every revising barrister, whether revising the lists of a county, city, or borough, before signing any page of any list, as required by the 41st section of the principal act, to read out audibly in open court the names expunged and inserted by him therein, and all corrections and insertions made by him.

16. It shall be lawful for any revising barrister, whether revising the lists of a county, city, or borough, to order any person to be removed from this court who shall interrupt the business of the court, or refuse to obey his lawful orders in respect of the same; and it shall be the duty of the chief constable, commissioner, or chief officer of police of the county, city, borough, or place in which the court is held, to take care that an officer of police do attend that court during its sitting, for the purpose of keeping order therein, and to carry into effect any order of the revising barrister as aforesaid.

17. For the purposes of this act the word "value" shall in the case of an objection to any person claiming to be retained or inserted in the list as an occupying tenant mean "amount of rental."

## SCHEDULES TO WHICH THIS ACT REFERS.

### SCHEDULE (A.)

#### No. 1.

#### *Precept of the Clerk of the Peace to the Overseers.*

County of —, } To the overseers of the poor of the parish  
to wit. } of — [or of the township of —.]

In pursuance of the provisions of the acts of Parliament in that behalf, I require your attention to the following

#### INSTRUCTIONS.

On or before the 20th June you are to publish one of the copies of the register for your parish [or township] herewith sent, together with a notice, signed by you, according to the form marked No. 2, among the printed forms herewith sent.

The manner in which you are required to publish that register and notice is as follows (that is to say), you are to fix one of the printed copies (each copy being first signed by you) on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish or township, including chapels which do not belong to the Established Church, or if there should be no such church or chapel, then in some public or conspicuous situation in your parish [or township], and it must remain there during a period including two Sundays at least, and not later than the 20th July.

On or before the last day of July you are to make out an alphabetical list of all persons who, on or before the 20th July, shall have delivered or sent to you their claims as voters for the county [riding, &c.] in which your parish [or township] lies, in respect of any property situate wholly or in part within your parish [or township]; and in making out such list you are to write or cause to be written, in the proper column of the printed form of list (herewith sent) numbered 3, the Christian name and surname of every such person, with the place of his abode, the nature of his qualification, and the local or other description of the property, and the name of the occupier, accordingly as the same shall be stated in the claim. If you have reasonable cause to believe that any person so claiming, or any person whose name shall appear in the copy of the register for your parish [or township] herewith sent, is not entitled to have his name on the new register about to be made, you are to add the word "objected" before his name in the margin of the copy of the register or list in which his name appears; and you are also to add the word "dead" before the name of any person whom you shall have reasonable cause to believe to be dead. Having done this, you are to sign the list of claimants, and also one of the copies of the register herewith sent, and to cause a sufficient number of copies of such lists to be written or printed, and then, on or before the 1st August, you are to publish the said register and lists, with your marginal additions, on every church and chapel in your parish [or township], in the same manner as before mentioned with regard to the notice.

You are to keep a copy of the list of claimants and of the said register sent to you, with your marginal additions thereon, signed by you, and to allow them to be perused by every person desirous of perusing them, at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the first fourteen days after you have published them, without payment or demand of any fee; and you are also to deliver copies of the list of claimants and of the said register, signed by you, to every person applying for the same, on payment of a price for such copy after the rate contained in the table marked Schedule (D.), No. 1, herewith sent.

You are to make out a list, according to the form numbered 6 (herewith sent), containing the name of every person against whom a notice of objection shall have been given to you, or any one of you, on or before the 20th August; and you are to publish copies of such lists on or before the 1st September on every church and chapel in your parish or township, in the same manner as before mentioned with regard to the notice; and you are to keep a copy of such list of persons objected to, to be perused by any person, without payment or fee, at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday during the first fourteen days of September, both inclusive; and you are to deliver a copy of such list to any person requiring the same, on payment of a price for

such copy after the rate contained in the table marked Schedule (D.), No. 1, herewith sent.

And if you shall find any such notice, list, register, or other document published by you as aforesaid to be destroyed, mutilated, defaced, or removed, you are forthwith to place another to the same effect in its place.

On or before the 1st September you are to deliver to the clerk of the peace of the county [riding, &c.] wherein your parish [or township] is situate, the list of claimants, the copy of the part of the register (herewith sent), and also a copy of the list of persons objected to, signed by you.

You are to attend the court to be holden by the barrister appointed to revise the lists relating to your parish [or township], of the time and place of holding which notice will be sent to you; and you are there to deliver to the barrister holding such court the original notices of claim and original notices of objection given to you as aforesaid.

Herein if you fail you will be liable to the penalties in that case provided. Given under my hand, this — day of —.

—, clerk of the peace for the county of —.

## No. 2.

Notice of Objection to be given to Parties already on the Register objected to by any Person other than Overseers, and to the occupying Tenant of the qualifying Property, where Notice is required to be given to the occupying Tenant.

To Mr. —, of — [here insert the name and place of abode of the person objected to as described in the list, and in the case of notice to the tenant of the qualifying property, insert his name and place of abode, as described in the list.]

Take notice that I object to your name [in the notice to the tenant instead of the words "your name," insert the name of the person objected to] being retained in the [here insert the name of the parish] list of voters for the county of — [or for the — Riding, &c.]

And I ground my objection,  
on the 1st column of the register,  
or on the 2nd column,  
or on the 3rd column,

and the objection relates

to the nature of your interest [in the notice to the tenant instead of the words "your interest," insert "the interest of" here insert the name of the person objected to], in the qualifying property;

or to the value of the qualifying property;

or on the 4th column.

Dated this — day of — 18—.

Signed A. B., of [place of abode],  
on the register of voters for the parish of —.

## SCHEDULE (C.)

### Form of Declaration by Voter as to his Place of Abode.

I, A. B., of [place of abode], on the list of voters for the parish [or township] of —, in the county [or riding or division of the county] of —, do solemnly and sincerely declare, that I possessed on the last day of July now last past the same qualification in respect of which my name has been inserted in such list, and that my true place of abode is now —.

(Signed) A. B.

Place of abode.

C. D.

Made and subscribed before  
me the — day of —,  
in the year —.

[Signature of justice, &c.]  
[Statement of his quality,  
as justice, &c.]

## CAP. XXXVII.

An Act to make better Provision respecting the Transaction of County Business and the Administration of Justice at Quarter Sessions in the County of Sussex; and to confirm certain Proceedings of the Justices of the said County.

[2nd June, 1865.]

Sect. 1. Divisions to be separate counties for purposes herein described.

2. Divisions not to separate counties for other purposes herein described.

3. 21 & 22 Vict. c. 33, not to apply to Sussex.

4. Divisions to be such for purposes of future acts.

5. Provisions as to adjourned sessions.

6. Precepts for divisions separately.

7. Notices of appeals.

8. Special court of general sessions.

9. Mode of summoning special court.

10. Quorum and adjournment of special court.

11. Authority of special court.

12. Orders of special court.

13. Rates for bridges in western division.

14. Nothing to affect sect. 6 of the 18 & 19 Vict. c. 57, as to expenses relating to militia.

15. Militia storehouses.

16. Nothing to affect provisions of the 48 Geo. 3, c. cvii.

17. Proceedings for acts done may be stayed by court.

18. Repeal of the 27 & 28 Vict. c. 100.

19. Short title.

Whereas, although there is only one commission of the peace for the whole county of Sussex, the county has for convenience been long treated as divided, for the purposes of the transaction of the public business of the county and the administration of justice at quarter sessions, into the eastern division and the western division; and it is expedient that legal validity be given to such division for those purposes, both as to the past and as to the future: be it therefore enacted &c., as follows:—

Sect. 1. Subject to the provisions of this act, the eastern division and the western division of the county of Sussex shall each be, and be deemed to have been, a county of itself in relation to the matters and business following, namely—in relation to the several matters specified in the first schedule to this act, whether arising under, or regulated by, the several enactments therein specified, or under or by any other enactments for the time being in force—and in relation to all matters whatever arising under, or regulated by, any of the enactments in the same schedule specified—and in relation to all expenditure required or permitted by any of those enactments, or by any other enactments for the time being in force to be made out of county rates, or rates in the nature of county rates—and in relation to all business connected with any of the matters in the present section mentioned, as far as the same relate to either division separately; and the justices of the peace for the county, sitting in quarter sessions for the county in each division thereof, shall have, and be deemed to have had, the like powers and authorities to transact such business in and for each division separately, as if each division was, and had been, a whole county of itself, with a commission of the peace for such whole county.

2. Nothing in this act shall make a division of the county of Sussex a county of itself in relation to any of the several matters specified in the second schedule to this act, whether arising under, or regulated by, any of the several enactments therein specified, or under or by any other enactments for the time being in force—or in relation to any matter whatever arising under, or regulated by, any of the enactments in the same schedule specified—or in relation to any expenditure required or permitted by any of those enactments, or by any other enactments for the time being in force to be made by justices of the peace out of county rates, or rates in the nature of county rates, for the purposes of any establishment, matter, or thing, over the establishing or constituting whereof justices of the peace as such have no authority—or in relation to any business connected with any of the matters in the present section mentioned.

3. Nothing in the act of the session of the 21 & 22 Vict. c. 33, "for the better Management of County Rates," shall apply, or be deemed to have applied, to the county of Sussex.

4. Where any enactment, passed after the passing of this act, has reference to divisions of a county, then, subject to the provisions of this act (unless a contrary intention appears), the divisions of the county of Sussex shall be deemed divisions within the meaning of such enactment, and every such enactment shall extend and apply to the divisions of the county of Sussex, as if they had separate commissions of the peace.

5. Every court held or to be held in either division of the county of Sussex, purporting to be a court of quarter sessions for the county, and begun to be held in that division within the time allowed by law for the holding of quarter sessions for the county, but after the conclusion of the business of the

court of quarter sessions for the county sitting in the other division, shall for all purposes be deemed to have been, or to be, the court of quarter sessions for the county duly continued by adjournment from the court of quarter sessions for the county which before sat in the other division, and that whether the adjournment of the court from a place in the one division to a place in the other division was or is actually made or not, or was or is recorded or not.

6. It shall be, and be deemed to have been, lawful for justices of the peace for the county of Sussex, in the manner heretofore used, to issue their precept from time to time to the sheriff of the county, to summon men of the body of one division of the county to serve as jurors at a court of quarter sessions, original or adjourned, to be held in that division, and to cause such precept to relate in all respects to one division only of the county, as if the division was and had been a county of itself, and for all sheriffs, constables, officers, and persons to act under a precept so framed.

7. With respect to any notice required to be given by one party to another relative to any appeal or other matter to be heard and determined by the court of quarter sessions of the peace for the county of Sussex, the first day of sessions shall be deemed to be the day on which the court of quarter sessions for the county begins to be held in that division wherein the appeal or other matter is heard and determined.

8. Nothing in this act shall interfere with the power of the justices of the peace for the county of Sussex to hold a court of general sessions of the peace for the county; and a special court of general sessions may be summoned and held as hereafter in this act provided.

9. If at any time two or more justices of the peace for the county of Sussex deliver to the clerk of the peace for the county or his deputy a requisition in writing under their hands and seals for the summoning and holding of a special court of general sessions for the county under this act, stating the business which they desire to be brought before the court, and the time and place at which the court is to be held (the time being not less than twenty-one days after the delivery of the requisition, and the place being within the county), the clerk of the peace shall, as soon as may be, and within seven days after the delivery to him of the requisition, publish the same, with a notice that a court will be held accordingly, by advertisement inserted in two newspapers usually circulating in the county of Sussex.

10. A special court of general sessions of the peace for the county of Sussex shall be held in accordance with such requisition; and nine justices shall be a quorum thereof; and the court may adjourn from time to time and from place to place within the county as seems fit.

11. Such a special court of general sessions shall have authority to transact the following business, and no other, namely, any business specified in the requisition, provided it is shewn to the court that it relates to or involves a question with respect to the total amount, or the shares chargeable to the divisions severally, of any expenditure incurred or to be incurred for a purpose common to or affecting both divisions or concerning the whole county at large (including expenditure in relation to any establishment, matter, or thing for the purposes of which the divisions of the county of Sussex, under the joint operation of this act and of any act relative to such establishment, matter, or thing, are for the time being united or authorised to be united as two counties of themselves), or with respect to some matter or thing preliminary to or consequent on any such expenditure, and either that a difference on the question has arisen between the justices sitting in quarter sessions in the divisions severally, or that the question has been referred to the special court by the justices sitting in quarter sessions in one of the divisions.

12. The special court of general sessions shall not make, assess, or levy any rate, or make any order on the treasurer of either division of the county of Sussex, but the order of the special court in any business transacted by it shall be binding on the justices of the peace sitting in quarter sessions in each division, and shall be carried into effect by those justices accordingly, as far as the divisions severally are affected by the order.

13. It shall be, and be deemed to have been, lawful for the justices of the peace for the county of Sussex sitting in quarter sessions, in the western division of the county, in the manner heretofore used, to make, assess, and levy separate

rates, in the nature of county rates, on and in the several rapes in that division, for repair and maintenance of bridges in the several rapes, and to appoint separate treasurers of the several rapes for the purposes of those rates.

14. Nothing in this act shall affect the provisions of sect. 6 of the act of the session of the 18 & 19 Vict. c. 57, "further to amend the Laws relating to the Militia in England," concerning the expenses to be paid for the purposes of the acts therein mentioned relating to the militia in the county of Sussex, or empower justices of the peace for the county of Sussex sitting in quarter sessions, or in special court of general sessions, or otherwise, to alter those provisions.

15. It shall be, and be deemed to have been, lawful for the justices of the peace for the county of Sussex, to provide and maintain out of county rates for the militia of the county two separate storehouses, with quarters for the permanent staff, and other proper conveniences and appurtenances, at separate places.

16. Nothing in this act shall affect the provisions of the act (local and personal) of the 48 Geo. 3 [c. cvii], "for enabling the Justices of the Peace for the Eastern Division of the County of Sussex to take down the present Shire Hall or Sessions House in the Town of Lewes, and for enabling them to build another Shire Hall or Sessions House in a more convenient Situation within the said Town."

17. Any action or proceeding whatever shall not, after the passing of this act, lie or be maintainable against any person on account of the doing or omitting, at any time before the passing of this act, of anything the doing or omission whereof is made valid or lawful by this act; and if any such action or proceeding is nevertheless brought or instituted, the court in which the same is brought or instituted, or any judge thereof, may, on the application of the defendant, make such order therein for staying proceedings, or such other order as seems just; but any such order may be at any time afterwards discharged or varied as justice may require.

18. The act of the last session of Parliament (c. 100) "to confirm certain Proceedings of the Justices of Sussex," is hereby repealed; but this repeal shall not affect the past operation of that act, or any rate, order, act, matter, or thing made, done, or regulated under that act before the passing of this act.

19. This act may be cited as "The County of Sussex Act, 1865."

#### THE FIRST SCHEDULE.

*Matters respecting which Divisions to be deemed separate Counties.*

County treasurers—12 Geo. 2, c. 29.

County rates—15 & 16 Vict. c. 81.

Constabulary—2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 7 & 8 Vict. c. 33; 19 & 20 Vict. c. 69; 22 & 23 Vict. c. 32.

Gaols and houses of correction—4 Geo. 4, c. 84; 5 Geo. 4, c. 85; 6 Geo. 4, c. 40; 7 Geo. 4, c. 18; 5 & 6 Will. 4, c. 38; 5 & 6 Vict. c. 98; 13 & 14 Vict. c. 105; 16 & 17 Vict. c. 43.

Asylums for pauper lunatics—16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; 19 & 20 Vict. c. 87; 25 & 26 Vict. c. 111.

Bridges—12 Geo. 2, c. 29; 14 Geo. 2, c. 33; 43 Geo. 3, c. 59; 52 Geo. 3, c. 110; 54 Geo. 3, c. 90; 55 Geo. 3, c. 143; 4 & 5 Vict. c. 49.

Highways—25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101.

#### THE SECOND SCHEDULE.

*Matters respecting which Divisions not to be deemed separate Counties.*

Militia—17 & 18 Vict. c. 105; 18 & 19 Vict. c. 57; 23 & 24 Vict. c. 94.

Coroners salaries—23 & 24 Vict. c. 116.

Judges lodgings—7 Geo. 4, c. 63; 2 & 3 Vict. c. 69.

#### CAP. XXXVIII.

An Act to authorise the Alteration of the Time for holding Statutory Meetings of Commissioners of Supply in Scotland.  
[19th June, 1865.]

#### CAP. XXXIX.

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.  
[19th June, 1865.]

CAP. XL.

An Act to extend to the Court of Chancery of the County Palatine of Lancaster certain of the Provisions of an Act passed in the Session, holden in the 23 & 24 Vict., intituled "An Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills." [19th June, 1865.]

Whereas it is doubtful whether the provisions contained in the 27th section of the act passed in the session holden in the 23 & 24 Vict. [c. 145], intituled "An Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills," apply to trustees appointed by the Court of Chancery of the County Palatine of Lancaster: be it declared and enacted &c., as follows:—

Sect. 1. That the words "the Court of Chancery" in the 27th section of the last-mentioned act shall be deemed to extend to and include the Court of Chancery of the County Palatine of Lancaster.

CAP. XLI.

An Act to confirm certain Provisional Orders under the Local Government Act, 1858, relating to the Districts of Sheffield, Bradford, and Gloucester. [19th June, 1865.]

CAP. XLIII.

An Act for facilitating the Annexation of Tithes to District Churches. [19th June, 1865.]

Sect. 1. *Short title of act.*

2. *Definition of terms.*

3. *Power to rectors or vicars to sell tithes to district church.*

4. *Assents required to agreement.*

5. *Form of agreement.*

6. *Assents how testified.*

7. *Persons and bodies corporate empowered to give lands or goods for the purposes of this act.*

8. *Agreement to be carried into effect by Order in Council.*

9. *Where tithes belong to incumbent of district church, Ecclesiastical Commissioners may declare church to be either a rectory or vicarage.*

Whereas by the act of the session of 1 & 2 Will. 4, c. 45, s. 21, it is, amongst other things, provided that it shall be lawful for any rector or vicar for the time being of any rectory or vicarage, by a deed duly executed by him, to annex to any chapel of ease or parochial chapel to any district church or chapel, or any chapel having a district assigned thereto, whether already built or hereafter to be built (such chapel of ease or other chapel or church, with the district or place to which the same belongs, being situate within the limits or within the original limits of the said rectory or vicarage), any part or parts of the tithes or other annual revenues belonging to such rectory or vicarage: provided that every such annexation be made with such consents as are therein mentioned: and whereas it is expedient to extend the powers of annexing tithes to district churches: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The District Church Tithes Act, 1865."

2. For the purposes of this act "district church" shall include any chapel of ease or parochial chapel, or any district church or chapel or any church or chapel having a district assigned thereto, whether already built or hereafter to be built, and the church of any parish formed or to be formed under the new Parishes Acts, 1843, 1844, and 1856, or any of such acts; and "district" shall include any such parish as last aforesaid, or any ancient or consolidated chapelry, or any parish or district formed under any of the Church Building Acts, or any other general or local act; and "tithes" shall include "commutation rentcharges, and all moduses, compositions, prescriptive and other payments or redemption money in lieu of tithes," or any part or parts thereof respectively, and any land for which such tithes or other payments in lieu thereof may have been commuted.

3. The rector or vicar for the time being of any rectory or vicarage may agree with the incumbent of any district church, either wholly or in part, situate within the limits or original limits of the said rectory or vicarage, to annex to

such district church the tithes or part of the tithes belonging to such rectory or vicarage, and arising in respect of property situate within the district belonging to such district church, in consideration of a sufficient compensation being made to the said rector or vicar and his successors for the loss of the said tithes out of the endowments of the said district church, or by some other means.

4. No agreement shall be valid on the part of a rector or vicar under this act unless it be assented to—first, by the archbishop or bishop of the diocese within which his rectory or vicarage is situate, or if it be situate within a peculiar jurisdiction belonging to an archbishop or bishop by such last-mentioned archbishop or bishop; and, secondly, by the patron of the rectory or vicarage; and no agreement shall be valid on the part of the incumbent of a district church except with the consent of the patron of such church, and with the approval of the Ecclesiastical Commissioners for England where the compensation to be made to the rector or vicar is payable out of funds in the hands of the said commissioners, and of the governors of the bounty of Queen Anne for the augmentation of the maintenance of poor clergy where the compensation to be made is payable out of funds in the hands or subject to the control of the said governors.

5. Any agreement under this act between a rector and vicar on the one part and an incumbent of a district church on the other shall be in writing under their respective hands.

6. Any assents required by this act may be testified by the assenting party executing the agreement between the rector or vicar and the incumbent of the district church and the provisions of the above-mentioned act, and of the act of the session of the 17 & 18 Vict. c. 84, as to patrons of benefices, shall apply to the assent of the patrons under this act.

7. The provisions of the 22nd section of the act of the session of the 6 & 7 Vict. c. 37, enabling persons and bodies corporate to give lands or goods for the purposes of that act, shall extend to authorise them to give in manner therein mentioned lands or goods for the purposes of purchasing any tithes, or to give any tithes with a view to the annexation of such tithes to a district church.

8. Any agreement made in pursuance of this act shall be carried into effect by the Ecclesiastical Commissioners for England, and any Order made by her Majesty in Council ratifying such agreement, and transferring on the one side the tithes proposed to be transferred to the incumbent of the district church, and on the other securing to the rector or vicar the compensation agreed upon, shall be valid to vest in the said incumbent and his successors such tithes, and to secure to the said rector or vicar such compensation; and when the approval of the governors of the bounty of Queen Anne is required, such approval may be certified by any instrument under their corporate seal, and when the approval of the said Ecclesiastical Commissioners is required it shall be implied by such Order in Council as aforesaid being passed.

9. Where tithes of any kind or amount belong to or shall to the satisfaction of the Ecclesiastical Commissioners be transferred to the incumbent of the church of any parish, chapelry, or district, provided such tithes arise within such parish, chapelry, or district, or where any annuity shall be granted by the Ecclesiastical Commissioners to any incumbent in consideration of tithes arising within the limits of his district, and now or at any time in the possession of the said Ecclesiastical Commissioners, it shall be lawful for the said Ecclesiastical Commissioners, by instrument under their common seal, to declare that such church shall be and be deemed to be either a rectory or vicarage as they may under the circumstances of each case think proper, and such instrument shall be published in the London Gazette, and take effect from the time of publication.

CAP. XLIII.

An Act to provide for the Security of Property of Married Women separated from their Husbands in Ireland.

[19th June, 1865.]

Sect. 1. *Protection of property acquired by wife after desertion by her husband.*

2. *Protection of wife's property after divorce à mens et thoro.*

3. *After divorce à mens et thoro, wife to be deemed feme sole as to property.*



4. *Mode of enforcing decree for alimony.*  
5. *To apply to Ireland only.*

Whereas certain provisions have been made for the protection of the property of married women separated from their husbands in England, and it is expedient to extend the same to Ireland; be it therefore enacted &c., as follows:—

Sect. 1. A wife deserted by her husband in Ireland may, at any time after such desertion, if resident within the police district of Dublin, apply to a police magistrate, or if resident in the country to justices in petty sessions, or in either case to a judge of the Court of Common Pleas sitting in chambers, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate or justices or judge, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband, and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a feme sole: provided always, that a copy of every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days from the making thereof, be lodged with the clerk of the peace of the county within which the wife is resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the same judge, or any other judge of the court, or to the magistrate or justices by whom such order was made, or for the time being acting instead of or as successors to the same, for the discharge thereof: provided also, that if the husband, or any creditor or other person claiming under the husband, shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: if any such order of protection be made, the wife shall, during the continuance thereof, be and be deemed to have been during such desertion of her in the like position in all respects with regard to property, and courtesy, and suing and being sued, as she would be under this act if she obtained a decree of divorce à mensâ et thoro.

2. In every case of a divorce à mensâ et thoro the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a feme sole with respect to property of any description which she may acquire or which may come to or devolve on her, and such property may be disposed of by her in all respects as a feme sole, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

3. In every case of divorce à mensâ et thoro the wife shall, whilst so separated, be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: provided that where upon any such divorce alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessities supplied for her use: provided that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.

4. Every decree or order for alimony and costs made or pronounced after the passing of this act by any court in Ireland having authority for that purpose may be enforced in the same manner as if the said decree or order was a judgment or order of one of the superior courts of law in Ireland.

5. This act shall be held to apply to Ireland only.

## CAP. XLIV.

An Act for confirming a Provisional Order made by the Board of Trade under the Merchant Shipping Act Amendment Act, 1862, relating to the Pilotage of the River Tyne. [19th June, 1865.]

## CAP. XLV.

An Act to provide for the Collection by means of Stamps or Fees payable in the Superior Courts of Law at Westminster, and in the Offices belonging thereto.

[19th June, 1865.]

Sect. 1. *From and after the 31st December, 1865, all fees payable in superior courts to be collected by stamps.*

2. *Stamps to be impressed or adhesive.*
3. *General rules to be made by Treasury.*
4. *Documents not properly stamped to be invalid.*
5. *Nothing to interfere with powers of Treasury, &c. for alteration of fees, &c.*
6. *Payment of salaries, &c. out of money received for stamps.*
7. *Accounts to be laid before Parliament.*
8. *Repeal of enactments in second schedule.*
9. *Short title.*

Be it enacted &c., as follows:—

Sect. 1. From and after the 31st December, 1865, or from and after such earlier time as the Commissioners of her Majesty's Treasury, with the concurrence of the Lord Chief Justices of the Courts of Queen's Bench and Common Pleas, and of the Lord Chief Baron of the Court of Exchequer, by notice published in the London Gazette, appoint, the following fees shall be collected by stamps; namely, all fees for the time being payable in the several courts and offices, or to the several officers, or in respect of the several matters, specified in the first schedule to this act, whether under the several enactments therein specified, or otherwise, and all fees whatever for the time being payable under any of those enactments.

2. All or any stamps to be used under this act shall be impressed or adhesive, as the Commissioners of her Majesty's Treasury from time to time direct.

3. The Commissioners of her Majesty's Treasury, with the concurrence of the Lord Chief Justices and Lord Chief Baron, may from time to time make such rules as seem fit for regulating the use of stamps under this act, and particularly for prescribing the application thereof to documents from time to time in use, or required to be used, for the purposes of such stamps, and for insuring the proper cancellation of adhesive stamps and keeping accounts of such stamps.

4. Any document which ought to bear a stamp under this act shall not be of any validity, unless and until it is properly stamped; but if any such document is, through mistake or inadvertence, received, filed, or used without being properly stamped, a judge of one of the said courts may, if he thinks fit, order that the same be stamped as in such order may be directed; and on such document being stamped accordingly, the same, and every proceeding relative thereto, shall be as valid as if such document had been properly stamped in the first instance.

5. Nothing in this act shall interfere with the exercise by any of the judges of the said courts, or by the Commissioners of her Majesty's Treasury, or by any other authority, of any power of altering or otherwise regulating the amount of any fees comprised in this act, or of any salaries or other charges for the time being by law payable thereout, or charged thereon, or of directing that any fees comprised in this act shall cease to be applicable to any charges, or payments charged thereon, or payable thereout, and shall be from time to time paid into the receipt of the Exchequer, and be carried to, and form part of, the Consolidated Fund of the United Kingdom.

6. The Commissioners of Inland Revenue shall keep a separate account of all money received in respect of stamps under this act; and, subject to the deduction out of the money so received of any expenses incurred by the Commissioners of Inland Revenue in the execution of this act, and to the payment or discharge thereout, in such manner as the Commissioners of her Majesty's Treasury from time to time direct, of salaries or other charges for the time being by law charged on, or payable out of, any fees comprised in this act, the money so received shall, under the direction of the Com-



missioners of her Majesty's Treasury, be carried to, and shall form part of, the said Consolidated Fund.

7. The account so kept by the Commissioners of Inland Revenue for every year ending the 31st March, together with an account for every such year, prepared under the direction of the Commissioners of her Majesty's Treasury, shewing the salaries and other charges now or formerly charged on, or payable out of, any fees comprised in this act, and for the time being, in pursuance of any act, paid out of the said Consolidated Fund, or out of money provided by Parliament, and also shewing all other charges in respect of the said courts, and their several offices, for the time being paid out of the said Consolidated Fund, or out of money provided by Parliament, by way of salary, compensation, or otherwise, shall be laid before both Houses of Parliament within one month after the termination of such year of account, if Parliament is then sitting, or if not, then within one month after the next meeting of Parliament; and the second of such yearly accounts, and every subsequent account, shall shew the items for two consecutive years, and the increase or decrease of any of those items in the second of those years as compared with the first.

8. From and after the time appointed for the commencement of the collection of fees by means of stamps under this act, the acts described in the second schedule to this act shall be repealed to the extent in that schedule specified.

9. This act may be cited as "The Common-law Courts (Fees) Act, 1865."

#### THE FIRST SCHEDULE.

15 & 16 Vict. c. 73, s. 10.  
(7 Will. 4 & 1 Vict. c. 30.  
18 & 19 Vict. c. 126, s. 20).

6 & 7 Vict. c. 20, s. 15.  
(23 & 24 Vict. c. 54).

17 & 18 Vict. c. 36, ss. 3, 4, 5.

3 & 4 Will. 4, c. 74, s. 89.  
5 & 6 Will. 4, c. 82, s. 6.

13 & 14 Vict. c. 75.

(17 & 18 Vict. c. 75.

20 & 21 Vict. c. 57—as to  
England.

25 & 26 Vict. c. 67, s. 36.  
25 & 26 Vict. c. 96).

1 & 2 Vict. c. 110, s. 19.

2 & 3 Vict. c. 11, ss. 2, 4, 7, 8, 9.

13 & 14 Vict. c. 75.

18 & 19 Vict. c. 15—as to  
Common Pleas.

23 & 24 Vict. c. 115, s. 2.

(3 & 4 Vict. c. 82.

13 & 14 Vict. c. 35, s. 17.

16 & 17 Vict. c. 107, ss. 195-7—  
as to England.

22 & 23 Vict. c. 35, s. 22.

23 & 24 Vict. c. 38, s. 4.

24 & 25 Vict. c. 134, s. 213.

25 & 26 Vict. c. 89, s. 114).

27 & 28 Vict. c. 112, s. 3.

5 & 6 Vict. c. 86, s. 4.

(22 & 23 Vict. c. 21, ss. 1-4).

The superior courts, and  
their several offices,  
judges' chambers, and  
clerks of assize, acting  
as associates on circuits.

Crown Office, Queen's  
Bench.

Registration of bills of  
sale, Queen's Bench.

Registration of certifi-  
cates, &c. of acknow-  
ledgments of deeds of  
married women, &c.,  
Common Pleas.

Registration of judgments,  
crown debts, &c., Com-  
mon Pleas.

Queen's Remembrancer's  
Office.

#### THE SECOND SCHEDULE.

5 & 6 Vict. c. 86.—An Act for abolishing certain Offices on the Revenue Side of the Court of Exchequer in England, and for regulating the Office of her Majesty's Remembrancer in that Court.—*Sect. 5.*

6 & 7 Vict. c. 20.—An Act for abolishing certain Offices on the Crown Side of the Court of Queen's Bench, and for regulating the Crown Office.—*Sect. 12.*

13 & 14 Vict. c. 75.—An Act to regulate the Receipt and Amount of Fees receivable by certain Officers in the Court of Common Pleas.—*Sect. 1.*

15 & 16 Vict. c. 73.—An Act to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judges'

Clerks by Salaries, and to abolish certain Offices in those Courts.—*Sects. 14 and 29.*

#### CAP. XLVI.

An Act to suspend the making of Lists and the Ballots for the Militia of the United Kingdom. [19th June, 1865.]

#### CAP. XLVII.

An Act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeon's Mates of the Militia; and to authorise the Employment of the Non-commissioned Officers. [19th June, 1865.]

#### CAP. XLVIII.

An Act to supply Means towards defraying the Expenses of providing Courts of Justice and the various Offices belonging thereto; and for other Purposes. [19th June, 1865.]

*Sect. 1. Short title.*

*2. Definition of terms.*

*3. Advances to be made by Paymaster-General.*

*4. Plan of building, and arrangements for care and maintenance of the building.*

*5. Repayments to the account of the Paymaster-General to be carried to, and be made part of, the Consolidated Fund.*

*6. Mode of repayment of advances to Consolidated Fund.*

*7. 200,000*l.* to be contributed out of money to be provided by Parliament as the value of courts and offices transferred, and of relief from rent to the public.*

*8. 1,000,000*l.* stock to be contributed by the Surplus Interest Fund.*

*9. Contribution of suitors other than of Chancery to be ascertained and discharged by a redemption annuity.*

*10. Mode of ascertaining the amount chargeable on the suitors.*

*11. Apportionment amongst suitors other than those of the Court of Chancery of their contribution.*

*12. Mode of levying contribution.*

*13. Annual adjustment of suitors' redemption annuity.*

*14. Cessation of rent of courts fee.*

*15. Power of Treasury to make regulations.*

*16. Chancery compensations may be redeemed or paid out of the capital of court funds.*

*17. Indemnity against loss by appropriation of Surplus Interest Fund.*

*18. Saving of jurisdiction of courts.*

*19. Forms of writs to be altered by Order in Council.*

*20. Power to try London causes in the new courts.*

*21. Power to try Middlesex causes in the new courts.*

*22. Discontinuance of existing courts and offices.*

*23. Society of Lincoln's-inn may repurchase Six Clerks and Registrars offices. Trusts declared by the 56 Geo. 3, c. 84, to be discharged. Lord Chancellor to adjust accounts. On payment of balance Lord Chancellor to make vesting order.*

Whereas a bill has been or is about to be introduced into Parliament in the present session by the short title of "The Courts of Justice Concentration (Site) Act, 1865," and the purposes intended to be carried into effect by such bill are the acquisition of a site capable of affording accommodation to the Superior Courts of Law and Equity, the Probate and Divorce Courts, the High Court of Admiralty, and the various offices belonging to the same, and to such other courts for the administration of justice, and offices connected therewith, as may be required:

And whereas it is expedient to make provision for the cost of acquiring such site, and of the erection thereon of suitable buildings, with all proper furniture and conveniences, for such courts and offices; and also to make provision for such other changes incident to and consequential on the removal of the existing courts and offices from the sites now occupied by them as are hereinafter mentioned:

And whereas it is expedient that the cost of erecting the said courts of justice should be borne, as follows:—

First, by money to be provided by Parliament to the extent of the value of the property surrendered, and of relief to the public by the cessation of rents now charged to the public:

Secondly, by a contribution of 1,000,000*l.* stock, part of a sum of 1,291,629*l.* 10*s.* 6*d.*, 3*l.* per Cent. Stock, now standing in the books of the Bank of England to the credit of an account intitled "Account of Securities purchased with Surplus Interest arising from Securities carried to Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," which has arisen from the profit of investments, made under the authority of Parliament at the risk of the public, of unemployed cash balances paid into the High Court of Chancery on account of individual suitors, and which is hereinafter referred to as "The Surplus Interest Fund."

Thirdly, by the taxation of suitors of the courts other than the Court of Chancery to be accommodated in the said building:

And whereas it is expedient that the moneys required from time to time for carrying into effect the purposes of the said Site Act and this act should be defrayed in the first instance out of moneys to be provided by Parliament:

And whereas the capital of the aforesaid Surplus Interest Fund is ultimately liable to make good any deficiency which may occur in the general cash balance remaining in the Court of Chancery from time to time for payment of the sums due to the suitors of the said court, and the same is, with other funds in Chancery, also charged with the payment of certain compensations in the nature of life annuities and other temporary charges, and it is expedient that provision should be made for such liabilities and charges in the manner hereinafter appearing:

Be it therefore enacted &c., as follows:—

#### *Preliminary.*

Sect. 1. This act may be cited for all purposes as "The Courts of Justice Building Act, 1865."

2. "The Treasury" shall mean the Commissioners of her Majesty's Treasury for the time being, or any two or more of them:

"Suitors" shall mean and include not only suitors in courts but also all persons proving wills or conducting business in any of the courts or offices to be accommodated in the said new buildings other than and except suitors in the Court of Chancery:

"Compensation allowances" shall mean and include not only the compensation allowances charged on or payable partly or wholly out of the Surplus Interest Fund, or the interest or dividends thereof, or other funds in Chancery, and existing at the time of the passing of this act, but also the salaries payable to the abolished Masters in Chancery and their clerks, and to the master of the reports.

#### *Provision of Funds for Works.*

3. All sums of money required from time to time for carrying into effect the purposes of the Courts of Justice Concentration (Site) Act, 1865, and for the purpose of erecting upon the site to be acquired under the same act all such suitable buildings for the accommodation of the Superior Courts of Law and Equity, the Probate and Divore Courts, and the Court of Admiralty, and the various offices connected therewith, and of such other courts for the administration of justice, and offices connected therewith, or offices used for any other purpose of legal administration, as may from time to time be prescribed by the Treasury, with all proper furniture and conveniences, and access thereto, not exceeding in the whole 1,500,000*l.* cash, shall be provided in the first instance by issues to be made to the Paymaster-General by the Comptroller-General of the Exchequer out of moneys to be provided by Parliament, and the Paymaster-General shall keep a separate account thereof.

4. The plan upon which the said buildings shall be erected, and the necessary arrangements for the proper and convenient accommodation of all the courts and offices to be provided for therein, and for proper access thereto, shall be determined upon by the Treasury, with the advice and concurrence

of such persons as her Majesty shall think fit to authorise in that behalf; and after the completion of the said buildings her Majesty may, by Order in Council, from time to time nominate and appoint such persons as she shall think fit, with such powers to superintend and regulate the said buildings and to provide for the proper care and maintenance thereof, and also (if it shall be found necessary) to vary from time to time the internal arrangements of the said buildings, and the purposes to or for which any part thereof may be used or appropriated, as to her Majesty shall seem proper and expedient: provided always, that no orders or regulations requiring any expenditure of public money shall be made by such persons without the consent of the Treasury.

#### *Repayment of Advances.*

5. All sums of money which shall be paid into the Bank of England to the account of the Paymaster-General, in repayment of advances made by virtue of this act, shall from time to time, at such periods as the Treasury shall direct, be transferred to the account kept by the said Bank of England with her Majesty's Exchequer, and when so transferred shall be carried to, and form part of, the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

6. For the purpose of securing the repayment of the advances to be made, under the provisions of this act, other than those to be granted as the estimated value of the present courts and offices, as hereinafter provided, there shall be contributed a sum not exceeding 1,300,000*l.* cash, as follows:—

First, 1,000,000*l.*, 3*l.* per Cent. Stock, out of the 3*l.* per Cent. Consolidated Annuities, and out of the 3*l.* per Cent. Reduced Annuities, now standing in the books of the Bank of England to the credit of an account intitled "Account of Securities purchased with Surplus Interest arising from Securities carried to Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery, which Account is herein called 'The Surplus Interest Fund:'"

And, secondly, a contribution in the nature of a redemption annuity payable for a term not exceeding fifty years, to be raised by fees to be imposed as hereinafter directed on suitors and on processes in the courts and offices to be accommodated in the said new buildings other than the Court of Chancery, equivalent to the residue of the said advances, with interest thereon.

7. Out of the moneys to be provided by Parliament as aforesaid for carrying into effect the purposes of the Courts of Justice Concentration (Site) Act, 1865, the sum of 200,000*l.* cash, being the estimated value of the present courts and offices, to be transferred to the Commissioners of Public Works and Buildings, or to become available for other public purposes, and of the relief from rental, which is at present defrayed out of public moneys for buildings in the occupation of legal departments to be hereafter accommodated in the new courts, shall be considered as a grant towards the erection of the said courts, and shall not be repayable to the Consolidated Fund; and if any other property now used for courts and offices, and not included in the said estimate of 200,000*l.*, should in like manner be transferred or become available for other public purposes, credit shall be given for the value of such property by a reduction of the annuity to be paid by the contribution to be levied on suitors as hereinafter provided, or otherwise as the Commissioners of the Treasury and the Lord Chancellor shall jointly determine.

8. There shall from time to time be sold, under the order of the Lord Chancellor (such order to be made on the certificate of the Treasury), such portions of the said surplus interest fund, to the extent of but not exceeding in the whole one million of the stock composing the same, as the said Lord Chancellor shall from time to time direct; and the moneys arising from every such sale shall be received by one of the cashiers of the Bank of England, and be paid by him to the aforesaid account of the Paymaster-General at the Bank of England, and shall be transferred to the account of her Majesty's Exchequer as aforesaid.

9. The residue of the advances, with interest, is to be repaid, and is to be deemed to be discharged, by a contribution, to be levied on the suitors (other than those of the Court of Chancery) using the said buildings, in the nature of a redemption annuity calculated at 4*l.* per cent. per annum on the amount of such residue, and payable for a term not ex-

ceeding fifty years; such term to commence from the period when any part of such buildings shall be used for the transaction of the business of such suitors; the commencement of such period to be announced in the London Gazette by the direction of the Treasury.

10. The amount of such residue so chargeable on the said suitors is to be ascertained by adding to the principal money payable by them interest from the time of the respective advances up to the commencement of the said term, at the rate of 3l. 6s. per cent. per annum, such being the rate at which the said redemption annuity of 4l. per cent. has been calculated.

11. The suitors (other than those of the Court of Chancery) are to contribute in proportion, as far as may be, to the extent of the use made by them of the buildings erected in pursuance of the said Building Act.

The proportion in which the suitors are to contribute shall, subject to the provisions of this act, be determined by the Treasury.

12. The contribution of the suitors under this act shall be levied by means of a separate fee, hereinafter called the rent of courts fee, to be collected by stamps, to be impressed on or affixed to such documents in use in each court or office to be accommodated in the said new buildings, and to be of such amounts as may be from time to time determined by the Treasury, with the consent of the Lord Chancellor, together with the chief judge of each of the superior courts of common law, or any one of such chief judges, and of such other persons or person as her Majesty by Order in Council may please to direct; and all the provisions of any act of Parliament relating to the payment or collection of the fees levied in any court in which the rent of courts fee is collected, and relating to the stamps for collecting such fees, shall apply to the rent of courts fee payable under this act.

The net produce of such rent of courts fee is to be paid by the Commissioners of Inland Revenue to the credit of the aforesaid account of the Paymaster-General.

13. The said Paymaster-General is to keep and annually make up an account of the moneys due and paid in respect of the said redemption annuity and of the net produce received by him in respect of such rents of courts fee, and of all other payments (if any) made on account of such redemption annuity; and the said fees imposed in respect of such rent of courts fee may be from time to time revised and varied so that the produce thereof may satisfy the amount payable from time to time in respect of the said redemption annuity; but if in any year there shall have been an excess in the said receipts beyond the amount due for such annuity, such excess is to be invested and accumulated, and applied at such periods as the Lord Chancellor and the Treasury shall from time to time determine in satisfying, discharging, and redeeming so much of the said annuity as it shall at the rates aforesaid, and having regard to the length of term unexpired, be sufficient to discharge and redeem.

This account shall be annually laid before Parliament.

14. As soon as such redemption annuity shall have been satisfied as aforesaid the rent of courts fee shall cease to be levied.

15. Subject to the provisions of this act, the Treasury may from time to time make regulations with respect to the mode of making and replacing the advances required to be made for the purposes of this act, and with respect to all other matters necessary to carry this act into effect; and any regulations made by the Treasury in pursuance of the power given by this act, shall be as valid as if they were inserted in this act.

*Power to redeem Chancery Compensations out of Capital, and Indemnity of the Chancery Cash Balance.*

16. The Lord Chancellor may negotiate with any of the persons entitled to compensation allowances for the purchase or redemption of the same, at a price not exceeding the price contained in the tables referred to in the act of Parliament of the 10 Geo. 4, c. 24, s. 14, either for a gross amount of cash or stock, or for a Government annuity; and for the purpose of effecting such purchase or redemption, or of providing for any part of such compensation allowances remaining unredeemed which the income of the funds charged therewith may be insufficient to satisfy, the Lord Chancellor may order the sale, transfer, or payment of any part of the residue of the said Surplus Interest Fund, or of any of the other funds

charged with such compensation allowances, or the purchase therewith from the Commissioners for the Reduction of the National Debt of terminable Annuities either for lives or for terms of years.

17. If the general cash balance of the suitors remaining in the Court of Chancery shall be at any time insufficient to satisfy the demands of the suitors thereon, such deficiency shall, to the extent to which the moneys arising by the sale of the aforesaid one million of the said Surplus Interest Fund would have been available, be made good out of the Consolidated Fund; and if the residue of the Surplus Interest Fund and the other funds charged with compensation allowances are insufficient to meet such charges, in that case such last-mentioned deficiency also shall be made good out of the Consolidated Fund.

*Saving of Jurisdiction on Removal of Courts.*

18. Notwithstanding their removal to the site provided by the Courts of Justice Concentration (Site) Act, 1865, the superior courts of law and equity may exercise the same jurisdiction, and enjoy the same rights and privileges, as they have hitherto exercised and enjoyed, and all statutes, charters, and other instruments wherein Westminster is described or referred to as being the locality of the said courts, shall be construed as if the site provided by the Courts of Justice Concentration (Site) Act, 1865, had been described or referred to in the said statutes, charters, and other instruments, as the locality of the said courts, instead of Westminster.

19. Her Majesty may, by Order in Council, make any alteration that may be thought expedient for the purpose of adapting the forms of testing writs and other instruments, and the forms themselves of writs or other instruments in use in the said courts, to the change of locality made by the Courts of Justice Concentration (Site) Act, 1865.

20. Her Majesty may, by Order in Council, from time to time, at the request of the lord mayor, aldermen, and commons of the city of London in common council assembled, direct that all or any issues or inquiries in cases at Nisi Prius which would otherwise be tried and executed within the county of the city of London shall for ever thereafter, or for a time to be specified in such Order, be tried and executed at the courts authorised to be erected by this act; and in the event of such Order being made, the said courts shall, for the purpose of giving jurisdiction to the sheriffs of London in relation to such trials and inquiries, and for the summoning of jurors, and for all other purposes of or incidental to any such trials or inquiries, be deemed to be situate in the county of the city of London.

21. Her Majesty may, by Order in Council, from time to time direct that all or any issues or inquiries in cases at Nisi Prius which would otherwise be tried and executed within the county of Middlesex shall for ever thereafter, or for a time to be specified in such Order, be tried and executed at the courts authorised to be erected by this act; and in the event of such Order being made, the said courts shall, for the purpose of giving jurisdiction to the sheriff of Middlesex in relation to such trials and inquiries, and for the summoning of jurors, and for all other purposes of or incidental to any such trials or inquiries, be deemed to be situate in the county of Middlesex.

*Transfer of Property now used for Offices.*

22. Whereas the legal business hitherto carried on in the buildings situate in or near Southampton-buildings, known as the "Masters' Offices," and erected in pursuance of the act of the session of the 32 Geo. 3, c. 42, is intended to be transacted in the courts, offices, and premises authorised to be erected under this act; and it is expedient that such Masters' offices should be appropriated in manner hereinafter mentioned for public purposes: be it enacted, that all the buildings erected as aforesaid, with the sites thereof, and all the lands and hereditaments, if any, purchased or acquired in pursuance of the said act of the 32 Geo. 3, with all their actual and reputed appurtenances, shall on the passing of this act vest in the Commissioners of her Majesty's Works and Public Buildings, as incorporated by the act of the session of the 15 & 16 Vict. c. 28, to be held by them for the purposes of the last-mentioned act, discharged from all subsisting trust declared with respect thereto: provided that the said commissioners shall not take possession of any part

or parts of the said buildings that may be occupied for legal purposes until the Lord Chancellor certifies that in his opinion such part or parts is or are no longer required by the persons so occupying the same.

23. And whereas by virtue of two statutes (local and personal) passed in the 15 Geo. 3, cc. 22 and 56, land, being part of the garden of the Hon. Society of Lincoln's-inn, was sold by the said society for the purpose of building thereon the Six Clerks and Registrars Offices, and the same are now used as the offices of the Accountant-General and Registrars in Chancery, and of the Clerks of Records and Writs, and of the Clerk of Inrolments in Chancery, and the same are now under the said two acts, and under the statute passed in the 6 Vict. c. 103, s. 29, vested in the Accountant-General of the Court of Chancery and his successors, but subject to a provision that the buildings shall be used for the purposes of the aforesaid offices, and for no other purpose:

And whereas, under an act (local and personal), passed in the 56 Geo. 3, c. 84, a court for the sittings of the Vice-Chancellor of England was erected in Lincoln's-inn, and vested in the said society for the public purposes by the said act directed, and for no other purposes:

And whereas the said society have, since the year 1840, expended out of their own funds diver sums in the erection and fitting up of courts for the use of the judges of the said Court of Chancery, and otherwise for the benefit of the said court:

And whereas, after the said new buildings shall have been erected and commenced to be used, the said several offices and courts will no longer be applicable to the purposes for which the same were erected or fitted up, and it is necessary that provision should be made by Parliament respecting the same; and as the said Hon. Society of Lincoln's-inn will cease to have the benefit of the business of the said courts being carried on within the precincts of their said inn, it is just and expedient that the said society should be repaid the amount of their aforesaid outlays: be it enacted, that it shall be lawful for the said society to repurchase and become repossessed of the said land sold by them for the said Six Clerks and Registrars Offices in Chancery, upon their repaying the purchase moneys received by them for the said land; and further, that the said society shall be entitled, if they so elect, to become possessed of the erections and buildings thereon, upon paying for the same at a valuation as old building materials; and further, that the trust declared by the said stat. 56 Geo. 3, c. 84, shall be discharged, and the said court erected under the said statute for the Vice-Chancellor of England shall become, to all intents and purposes, the exclusive property of the said society, without their making any payment for the same, or the materials thereof; and further, that the said society shall be repaid the said principal sums they have from time to time since the year 1840 expended out of their funds for the use of the said Court of Chancery; and that it shall be lawful for the said Lord Chancellor to adjust and settle an account with the said society upon the basis of this enactment, and to order that the balance of such account shall be paid into, or out of, the Sutors' Fee Fund of the Court of Chancery, as the case may be; and upon payment of the said balance to or by the said society, as the case may be, the Lord Chancellor shall make an order that the said land and buildings do vest in the trustees for the time being of the real estates of the said society, and the same shall thereupon be vested accordingly, discharged from all trusts, restrictions, and regulations declared, imposed, or enjoined by the said two statutes, the 15 Geo. 3, cc. 22 and 56, and 6 Vict. c. 103, or any or either of them; but this enactment is not to come into force, or to take any effect, until after the Lord Chancellor shall certify under his hand to the Treasury that the business hitherto conducted in the said buildings and courts, or any part thereof, has been transferred to the buildings authorised to be erected under the Courts of Justice Concentration (Site) Act, 1865, and such certificate shall have been filed in the Report Office of the Court of Chancery; and the option of repurchasing the said sites, and purchasing the said erections and buildings respectively, may be exercised by the said society at any time within two years after notice to the treasurer of the said society of the filing of such certificate.

## CAP. XLIX.

An Act to enable the Commissioners of her Majesty's Works and Public Buildings to acquire a Site for the Erection and Concentration of Courts of Justice, and of the various Offices belonging to the same. [19th June, 1865.]

Sect. 1. *Short title.*

2. *Incorporation of Commissioners of Works for purposes of act.*
3. *Description of purposes of act.*
4. *Power to commissioners to purchase lands.*
5. *Lands to continue subject to land tax and rates.*
6. *Power to commissioners to enter on lands.*
7. *The 8 & 9 Vict. c. 18, and the 23 & 24 Vict. c. 106, incorporated.*
8. *Questions of disputed compensation in London to be heard in the Lord Mayor's Court.*
9. *Extinction of rights of way and other easements.*
10. *Commissioners to pay to incumbents annual sums for loss of fees, &c.*
11. *Compensation for tithes or rentcharges to be paid by commissioners.*
12. *As to claims for compensation by yearly tenants.*
13. *Limits for compulsory purchases.*
14. *Power to purchase lands for accesses to courts and offices by agreement.*
15. *Powers to commissioners to execute works.*
16. *For protection of sewers of Metropolitan Board of Works.*
17. *Saving rights of the commissioners of sewers.*
18. *Exemption from Building Act.*
19. *No notice to be given to purchase property until a certificate has been received by the Treasury from persons appointed under the 28 Vict. c. 48, to advise, &c. as to plan.*
20. *No purchases to be without the authority of the Treasury.*
21. *Authentication of notices.*
22. *Orders concerning money paid into court may be made at chambers.*
23. *Penalty for obstructing commissioners in exercise of power.*
24. *Deeds not liable to stamp duty.*
25. *Deeds to be enrolled in Court of Exchequer.*
26. *Plans to be deposited in the Office of Works, &c., and be open for inspection.*

Whereas a commission was issued in 1858, under the Sign Manual of her Majesty, for the purpose of inquiring into the expediency of bringing together into one place or neighbourhood all the Superior Courts of Law and Equity, the Probate and Divorce Courts, and the Court of Admiralty, and the various offices belonging to the same, and into the means which existed or might be supplied for providing a site or sites, and for erecting suitable buildings for carrying out the above objects: and whereas the said commission have reported to her Majesty, that the concentration of such courts is expedient, and have recommended, as a site for the said courts and offices, certain houses, buildings, and lands situate in the parish of Saint Clement Danes and the Liberty of the Rolls, in the county of Middlesex, and the parish of Saint Dunstan in the West, in the city of London, but such houses, buildings, and lands cannot be acquired without the authority of Parliament: and whereas duplicate plans, describing the situation of the said houses, buildings, and lands, hereinafter referred to as the prescribed lands, with a book of reference thereto, containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers thereof, have been deposited with the clerk of the peace for the county of Middlesex, at his office at the Sessions House, Clerkenwell, and with the clerk of the peace for the city of London, at his office at the Sessions House in the Old Bailey, and it is expedient that powers should be given to the Commissioners of her Majesty's Works and Public Buildings to purchase such lands, and to provide accommodation for the said courts and offices, or some of them: be it enacted &c., as follows:—

*Preliminary.*

Sect. 1. This act may be cited for all purposes as "The Courts of Justice Concentration (Site) Act, 1865."

*Incorporation of Commissioners.*

2. The Commissioners of her Majesty's Works and Public Buildings for the time being, hereinafter referred to as "the commissioners," shall be incorporated for the purposes of this act by the name and style of "The Commissioners of her Majesty's Works and Public Buildings," and by that name shall have perpetual succession and a common seal, to be by them from time to time altered, as they think fit, with power to hold lands for the purposes, and subject to the provisions of this act.

*Acquisition of Site.*

3. The purposes of this act are the acquisition of a convenient site for the accommodation of the Superior Courts of Law and Equity, or some of them, the Probate and Divorce Courts, and the Courts of Admiralty, and the various offices connected with them, and of such other courts for the administration of justice, and offices connected therewith, or used for any other purpose of legal administration, as may from time to time be prescribed by the Commissioners of her Majesty's Treasury, and the providing of convenient means of access to the said courts and offices.

4. The commissioners may, out of any moneys placed at their disposal for that object, purchase, take, and use, for the purposes of this act, all or any of the prescribed lands.

5. All lands purchased by the commissioners in pursuance of this act, which were at the time of such purchase subject to land tax, to poor or other rates, shall continue liable thereto, but they shall not be assessed to any tax or rate on a higher rateable value than that on which they were assessed on the 1st January, 1865.

6. The commissioners, their surveyors, officers, and workmen, may at all reasonable times in the daytime, upon giving twenty-four hours previous notice in writing, enter into and upon any of the prescribed lands for the purpose of surveying or valuing the same.

7. The Lands Clauses Consolidation Act, 1845, and the act amending the same passed in the session of the 23 & 24 Vict. c. 106, shall be incorporated with this act, with the exceptions and additions and subject to the provisions hereinafter contained; that is to say—

(1). There shall not be incorporated with this act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned; that is to say, sect. 16, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force; sect. 17, whereby it is provided that the certificate of the justices shall be evidence that the capital has been subscribed; or the provisions relating to affording access to the special act:

(2). In the construction of this act and the said incorporated acts, this act shall be deemed to be the special act, and the commissioners shall be deemed to be the promoters of the undertaking:

(3). The bond required by sect. 85 of the Lands Clauses Consolidation Act shall be under the common seal of the commissioners, and shall be sufficient without the addition of the sureties in the said section mentioned:

(4). The term "sheriff," used in the provisions of the Lands Clauses Consolidation Act, 1845, relating to the reference to a jury, shall, as regards any part of the prescribed lands within the city and liberty of Westminster, be deemed to apply to the high bailiff of the city and liberty of Westminster or his deputy.

8. In every case in which any question of disputed compensation may be required to be determined by the verdict of a jury, in the city of London or the liberties thereof, the jury shall be required to appear before the court of the lord mayor and aldermen of the city of London, to be holden in the outer chamber of the Guildhall of the said city, according to the custom of the said city, at a time to be appointed by the said court; and all the directions and provisions contained in the Lands Clauses Consolidation Act, 1845, in respect to the settlement of questions of disputed compensation by juries appearing before the sheriff, coroner, or other person, shall extend and be applied with respect to the settlement of any such question of disputed compensation under this act by juries appearing before the said court of mayor and alder-

men as aforesaid; and the said court shall give judgment for the purchase money or compensation assessed by such jury; and a verdict and judgment shall be signed by the registrar of the said court of mayor and aldermen, and entered among the records of the said court, and the said registrar shall settle the costs of every such inquiry.

9. Upon the purchase by the commissioners of the prescribed lands or any part thereof, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains, on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such land, or part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the commissioners, subject to this provision, that all persons and bodies of persons, corporate or unincorporate, may recover from the commissioners such compensation, if any, as they may be entitled to under the provisions of the Lands Clauses Consolidation Act, 1845, for any rights or property of which they may be deprived in pursuance of this section; the amount of such compensation to be determined in manner provided by the said Lands Clauses Consolidation Act, 1845.

10. The commissioners shall pay an annual sum to each of the persons hereinafter mentioned; that is to say—

The rector of St. Clement Danes, in the city of Westminster;

The perpetual curate of St. Thomas, Liberty of the Rolls, in the county of Middlesex;

The rector of the parish of St. Dunstan in the West, in the city of London;

by way of compensation for the loss of all such Easter dues, oblations, surplice fees, or other customary payments that may be taken away in consequence of carrying into effect the purposes of this act. Such payments shall be made half-yearly, on the 1st January and the 1st July in each year. The amount payable to each such person shall be calculated on an average of the amount received by him in respect of the said customary payments on an average of the three years immediately preceding the passing of this act, and in the event of difference shall be definitely settled by an arbitrator appointed by her Majesty's Attorney-General for the time being.

The first of the above-mentioned half-yearly payments shall be made on the 1st July, 1867.

11. Nothing in this act contained shall prejudice the right of any rector or other ecclesiastical person to any tithes, or rentcharge in lieu thereof, charged upon or payable out of any lands purchased by the commissioners in pursuance of this act; and the said commissioners shall from time to time pay the said tithes or rentcharge, when the same shall become due, out of any moneys that may be in their hands applicable thereto.

12. All claims for compensation made upon the commissioners under the provisions of this act or any act incorporated herewith shall, if the person claiming to be entitled to compensation has no greater interest than as tenant for a year or from year to year in the lands in respect of which the compensation is claimed, be determined in manner provided by the 121st section of the Lands Clauses Consolidation Act, 1845.

13. The limit for the compulsory purchase of lands under this act shall be five years.

14. The commissioners may, for the purpose of improving the approaches, or of providing convenient roads, bridges over, or tunnels under streets, or other modes of access to the proposed courts of justice and the offices connected therewith, acquire by purchase or otherwise any lands or interest in lands or easements, and for the purposes of such acquisition the said Lands Clauses Consolidation Act shall be deemed to apply, with the exception of so much thereof as relates to the purchase of lands otherwise than by agreement.

15. The commissioners may pull down and remove any buildings on the prescribed lands, and may construct thereon such buildings and works, and do all such other things, as may in their opinion be necessary or expedient in order to carry into effect the purposes of this act or any of them.

16. Where any works to be done under or by virtue of this act shall or may pass over, under, or by the side of, or so as to interfere with, any main sewer under the jurisdiction or control of the Metropolitan Board of Works, the commissioners shall not commence such work until they shall have given to the said Metropolitan Board fourteen days previous

notice in writing of their intention to commence the same, by leaving such notice at the principal office of such board, with a plan and section shewing the course and inclination thereof, and other necessary particulars relating thereto, and until such board shall have signified their approval of the same, unless such board do not signify their approval, disapproval, or other directions within fourteen days after service of the said plans, sections, and particulars as aforesaid; and the commissioners shall comply with and conform to all orders, directions, and regulations of the said Metropolitan Board in the execution of the said works, and shall provide, by new, altered, or substituted works, in such manner as such board may deem necessary, for the proper protection of, and for preventing injury or impediment to, the main sewers hereinbefore referred to, by or by reason of the said intended works or any part thereof, and shall save harmless the said Metropolitan Board against any expense to be occasioned thereby; and all such last-mentioned works shall be done by or under the direction, superintendence, and control of the engineer or other officer or officers of the said Metropolitan Board, at the expense in all respects of the commissioners; and all expenses which the said Metropolitan Board may be put to by reason of the works of the commissioners, whether in the execution of works, the preparation or examination of plans or designs, superintendence, or otherwise, shall be paid to such board by the commissioners; and when any new, altered, or substituted works as aforesaid, or any works connected therewith, shall be completed, by or at the expense of the commissioners, under the provisions of this act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said Metropolitan Board as any sewers or works now are or hereafter may be; and nothing in this act shall extend to prejudice, diminish, alter, or take away any of the rights, powers, or authorities of the said Metropolitan Board, but all such rights, powers, or authorities shall be as valid and effectual as if this act had not been passed; provided that no renewal or alteration, other than a change of site of existing works, shall be deemed new works under this act; and if the commissioners shall complain of any withholding of consent on the part of the said board, or of any orders and directions and regulations, or of any charges sought to be imposed by such board upon the commissioners, in the execution of any such works, it shall be lawful for her Majesty's Principal Secretary of State for the Home Department for the time being to determine every such difference, and by order under his hand to authorise the works, and the manner of executing the same, as he shall think fit; and after the date of the application by the commissioners to the said Secretary of State no penalty shall be incurred by any default of the commissioners in respect of or in relation to such works, or the matters in difference between the parties.

17. Nothing in this act contained shall prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested in the commissioners of sewers of the city of London, with respect to Bell-yard, Fleet-street, in the city of London.

18. All buildings erected on the prescribed lands shall be exempt from the operation of the first part of the Metropolitan Buildings Act, 1855.

19. No notice shall be given of the intention to take any property under this act, nor shall any contract be entered into for the purchase of any property, until a certificate in writing shall have been received by the Commissioners of her Majesty's Treasury, signed by the major part in number of the persons appointed by her Majesty, under the Courts of Justice Building Act, 1865, to advise and concur with the Commissioners of her Majesty's Treasury, with reference to the plan and arrangements of the buildings to be erected upon the lands hereby authorised to be taken, stating that they are satisfied that the lands to be acquired under this act, of which a plan has been laid before Parliament, are sufficient for all the purposes of the intended new courts and buildings connected therewith, and that the probable cost of the said lands and buildings will not exceed the amount of the funds provided, under the Courts of Justice Building Act, 1865, for those purposes.

#### Miscellaneous.

20. No purchase shall be made by the commissioners for the purposes of the act without the consent in writing of the Commissioners of her Majesty's Treasury; but it shall not

be necessary for any vendor or any purchaser from the said commissioners to ascertain that such assent has been given, nor shall the commissioners be bound to produce to any such vendor or purchaser any evidence of such assent; and any such assent may be given either generally, or for any particular purchase or purchases, as to the said Commissioners of the Treasury may seem meet.

21. Every notice, summons, writ, or other document required to be given, issued, or signed by or on behalf of the commissioners, may be given, issued, or signed by the solicitor or secretary for the time being of the commissioners, and need not be under the common seal of the commissioners, and may be in writing or in print, or partly in writing and partly in print.

22. All orders which under this act the Court of Chancery is empowered to make on motion or petition, in relation to any money paid into the Bank of England with the privy of the Accountant-General of the Court of Chancery under this act, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, may be made by any judge of the said court upon application to him, while sitting at chambers, upon summons, in like manner as in other cases in which proceedings may be so had, subject nevertheless to any General Orders which may hereafter be made concerning the practice, proceedings, or business of the said court, on any such applications.

23. If any person wilfully obstruct any person acting under the authority of the commissioners, in the lawful exercise of the powers vested in them under this act, he shall forfeit a sum not exceeding 5*l.* for every such offence, to be recovered in a summary manner.

24. No deed, bond, or other instrument made by, to, or with the commissioners for any of the purposes of this act, shall be subject to any stamp duty imposed by any act now in force, nor to any stamp duty to be imposed by any future act, unless such instruments are specially charged therewith in such future act.

25. Every conveyance, assignment, or other deed or instrument whereby any land by this act authorised to be purchased is conveyed or assigned to the commissioners for the purposes of this act, shall be enrolled amongst the records of her Majesty's Court of Exchequer, and entered in the books of the said commissioners; and every such conveyance, assignment, or other deed or instrument, when so enrolled, shall, without any other enrolment or acknowledgment thereof, and without any registry thereof, be good and available in law, any act of Parliament, law, practice, or usage to the contrary in anywise notwithstanding.

26. A copy of the plans of the prescribed lands shall be deposited at the office of the commissioners, and shall remain at the said office, to the end that all persons may at all reasonable times, on payment of a fee of 1*s.* have liberty to inspect the same.

#### CAP. L.

An Act for regulating the keeping of Dogs, and for the Protection of Sheep and other Property from Dogs, in Ireland. [19th June, 1865.]

Sect. 1. Short title.

2. Commencement of act.

3. Only to extend to Ireland.

4. Interpretation clause.

5. Commissioners of Inland Revenue to provide dies for denoting license duty.

6. Licensee to keep dogs, &c.

7. Occupiers to be liable to payment of license duty. Joint occupiers.

8. Clerk to make entry of licensees in book to be kept for that purpose.

9. Proceedings on transfer of dog by sale or gift.

10. Power to justices to enforce payment of fees in certain cases. Petty sessions clerk shall fill up forms, when required.

11. Lists of licensees to be printed and posted.

12. Petty sessions clerk to account with the registrar half-yearly.

13. Accounts to be verified.

14. Allowance for licensees or license stamps spoiled &c.

15. Repayment of expenses.

16. Moneys received for stamps to be subject to the 21 & 22 Vict. c. 100.



17. Accounts to be presented to Parliament.
18. Registrar to furnish notices setting forth acts required to be done under this act.
19. Provisions of the Stamp Acts, as far as applicable, to be extended to this act.
20. Penalty on owners of dogs not having the same licensed.
21. Penalty for refusing to produce license.
22. Recovery of penalties. Application of penalties.
23. No penalty where failure not wilful.

CAP. LI.

An Act to enable the Admiralty to contract for certain Works in connexion with the Extension of Her Majesty's Dock-yards. [29th June, 1865.]

CAP. LII.

An Act to amend the Drainage and Improvement of Lands Acts (Ireland), and to afford further facilities for the Purposes thereof. [29th June, 1865.]

- Sect. 1. Short title.
2. Copies of inspectors' reports to be lodged with clerk of the peace.
3. Part of sect. 38 of first-recited act repealed, and Commissioners of Public Works empowered to advance moneys necessary for the works.
4. All the provisions of former acts with respect to loans to apply to loans under this act.
5. Nothing in the acts construed to render legal works that would have been illegal if acts had not passed.
6. This act to apply to districts in which provisional orders have been made.
7. This and recited act to be as one.

CAP. LIII.

An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Act amending the Same. [29th June, 1865.]

CAP. LIV.

An Act to alter the Days between which Pheasants may not be killed in Ireland. [29th June, 1865.]

- Sect. 1. *Part of recited act repealed.*
2. *Fixing period for shooting pheasants in Ireland.*
3. *Limit of act.*

Whereas by an act passed in the Parliament of Ireland, in the 27 Geo. 3, c. 35, intituled "An Act for the Preservation of Game," it was enacted (amongst other things) that from and after the 1st June, 1787, every person who shall wilfully kill or destroy any pheasant between the 10th January and the 1st September in any year shall forfeit a sum not exceeding 5*l.* for every such pheasant: and whereas these days having been found inconvenient, it is expedient to alter them: be it therefore enacted &c., as follows:—

Sect. 1. From and after the passing of this act so much of the said recited act of the 27 Geo. 3 as relates to the killing or destroying any pheasant between the 10th January and the 1st September in any year shall be, and the same is declared to be, hereby repealed.

2. From and after the passing of this act, no person or persons shall on any pretence whatsoever kill or destroy any pheasant between the 1st February and the 1st October in any year, and if any person or persons shall do so, he or they shall be liable to the same penalty as by the before-recited act is laid upon every person or persons transgressing the same.

3. This act shall be held to apply to Ireland only.

CAP. LV.

An Act to empower the University of Oxford to make Statutes as to the Vinerian Foundation in that University. [29th June, 1865.]

- Sect. 1. *Power to University to make statutes as to the Vinerian foundation.*
2. *Provisions of the 25 & 26 Vict. c. 26, to apply to statutes under this act.*
3. *Short title.*

Whereas it is expedient to extend the powers of making statutes possessed by the University of Oxford: be it enacted &c., as follows:—

Sect. 1. That the said University may, with the view of better promoting the teaching and study of the law in the said University, vary by statute all or any of the directions, trusts, and regulations now in force relating to the Vinerian professorship and the Vinerian fellowship and scholarships respectively, and to the application of the funds held in trust by the said University under the will of Charles Viner, Esq., deceased: provided, that part of the income of such funds shall always be applied to the teaching of law, and the residue towards encouraging the study of the law by means of fellowships or scholarships, or both; and that the name of the said Charles Viner, or the title Vinerian, shall always be retained in connexion with the said foundation: provided also, that the interests of the present professor, fellow, and scholars respectively on the said Vinerian foundation shall not, without their respective consents, be altered or affected by any such statute; but every person who, after the passing of this act, may be elected a Vinerian professor, or fellow, or scholar, shall be subject to any statute to be afterwards made by the University, under the powers of this act, as fully as if he had been elected under such statute.

2. All the provisions of the Oxford University Act, 1802, as to statutes of the University passed by virtue thereof, shall extend and apply to statutes of the University made by virtue of this act; and the Oxford University Act, 1802, and this act, shall be construed together as one act.

3. This act may be cited for all purposes as "The Oxford University, Vinerian Foundation, Act, 1865."

CAP. LVI.

An Act to provide for the better Prevention of Trespass in Scotland. [29th June, 1865.]

- Sect. 1. *Short title.*
2. *Interpretation of terms.*
3. *Parties lodging in premises or encamping on land, without permission, guilty of an offence.*
4. *Apprehension and punishment of offenders.*
5. *As to prosecutions under act.*

Whereas it is expedient that provision should be made for the better prevention of trespass in Scotland: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Trespass (Scotland) Act, 1865."

2. In this act the following words shall have the meanings here assigned to them:

"Premises" shall mean and include any house, barn, stable, shed, loft, granary, outhouse, garden, stack-yard, court, close, or inclosed place:

"Magistrate" shall mean and include the sheriff and sheriff substitute, or any one or more justice or justices of the peace, or any one or more magistrate or magistrates, having jurisdiction respectively in the county or burgh where any offence against the provisions of this act is committed, or where any person charged with such offence is found or brought to trial:

"Procurator fiscal" shall mean and include the procurator fiscal of the court having such jurisdiction.

3. Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any private road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation, or on or near any turnpike road, statute labour road, or other highway, shall be guilty of an offence punishable as hereinafter provided.

4. Every person who commits an offence against the provisions of this act may, if found in the act of committing the same by any officer of police or constable, be apprehended by such officer or constable, and detained in any prison, police station, lock-up, or other place of safe custody, and not later than in the course of the next lawful day after he shall have been so taken into custody shall be brought before a magistrate; and every person charged with the commission of any



such offence may, if not so taken into custody, or if he shall have been liberated on bail or pledge, be summoned to appear before a magistrate, and on being convicted of such offence on his own confession, or on the evidence of one or more credible witnesses, shall for a first offence be liable to a penalty not exceeding 20s., or to imprisonment for any period not exceeding fourteen days, and for a second or any subsequent offence shall be liable to a penalty not exceeding 40s., or to imprisonment for any period not exceeding twenty-one days.

5. Every prosecution for any offence against the provisions of this act shall be raised and proceeded in at the instance of the procurator fiscal, and shall be heard and determined by one or more magistrate or magistrates in a summary form; and every such prosecution shall be commenced within one month after the offence has been committed.

## CAP. LVII.

An Act to amend certain Provisions in the Ecclesiastical Leasing Act, 1858. [29th June, 1865.]

Whereas doubts have arisen as to the interpretation of certain provisions of the Ecclesiastical Leasing Act, 1858: be it enacted &c., as follows:—

Sect. 1. The moneys which, in respect of any sale effected under the said act, shall become due and payable by way of perpetual annual chief or other rent or rent-charge, shall not be subject to the provisions contained in the 2nd section of the same act, which require that all moneys which may become payable in respect of sales under the Ecclesiastical Leasing Acts, shall be paid to the Ecclesiastical Commissioners for England, to be invested and dealt with as contemplated by the said section.

## CAP. LVIII.

An Act for confirming, with Amendments, certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Carrickfergus, Hastings, Maldon, Northam, and Shanklin. [29th June, 1865.]

## CAP. LIX.

An Act for confirming, with Amendments, a Provisional Order made by the Board of Trade under the Merchant Shipping Act Amendment Act, 1862, relating to the Pilotage of the Port of Sunderland. [29th June, 1865.]

## CAP. LX.

An Act to render Owners of Dogs in England and Wales liable for Injuries to Cattle and Sheep. [29th June, 1865.]

Sect. 1. *Owner of dog to be liable in damages for any injury committed by his dog. Recovery of damages.*

2. *Who shall be deemed the owner of the dog.*

3. *Extent of act.*

Whereas it is expedient to amend the law as to the liability of the owners of dogs for injuries done to cattle and sheep by such dogs: be it therefore enacted &c., as follows:—

Sect. 1. The owner of every dog shall be liable in damages for injury done to any cattle or sheep by his dog; and it shall not be necessary for the party seeking such damages to shew a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity, or that the injury was attributable to neglect on the part of such owner. Such damages shall be recoverable in any court of competent jurisdiction by the owner of such cattle or sheep killed or injured. Where the amount of the damages claimed shall not exceed 5l., the same shall be recoverable in a summary way before any justice or justices sitting in petty sessions under the provisions of the act the 11 & 12 Vict. c. 43.

2. The occupier of any house or premises where any dog was kept or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog, and shall be liable as such, unless the said occupier can prove that he was the owner of such dog at the time the injury complained of was committed, and that such dog was kept or permitted to live or remain in the said house or premises without his sanction or knowledge: provided always, that where there are more occupiers than one in any house or premises let in sepa-

rate apartments, or lodgings, or otherwise, the occupier of that particular part of the premises in which such dog shall have been kept or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog.

3. This act shall extend to England and Wales only.

## CAP. LXI.

An Act for providing a further Sum towards defraying the Expenses of constructing Fortifications for the Protection of the Royal Arsenal and Dockyards and the Ports of Dover and Portland, and of creating a Central Arsenal. [29th June, 1865.]

## CAP. LXII.

An Act to provide for the Exemption of Churches and Chapels in Scotland from Poor Rates. [29th June, 1865.]

## CAP. LXIII.

An Act to remove Doubts as to the Validity of Colonial Laws. [29th June, 1865.]

Sect. 1. *Definitions:* "colony:" "legislature:" "colonial legislature:" "representative legislature:" "colonial law:" "act of Parliament, &c. to extend to colony when made applicable to such colony:" "governor:" "letters-patent."

2. *Colonial law when void for repugnancy.*

3. *Colonial law when not void for repugnancy.*

4. *Colonial law not void for inconsistency with instructions.*

5. *Colonial legislature may establish, &c. courts of law. Representative legislature may alter constitution.*

6. *Certified copies of laws to be evidence that they are properly passed. Proclamation to be evidence of assent and disallowance.*

7. *Certain acts enacted by legislature of South Australia to be valid.*

Whereas doubts have been entertained respecting the validity of divers laws enacted or purporting to have been enacted by the legislatures of certain of her Majesty's colonies, and respecting the powers of such legislatures, and it is expedient that such doubts should be removed:

Be it hereby enacted &c., as follows:—

Sect. 1. The term "colony" shall in this act include all of her Majesty's possessions abroad in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in her Majesty under or by virtue of any act of Parliament for the Government of India:

The terms "legislature" and "colonial legislature" shall severally signify the authority, other than the Imperial Parliament or her Majesty in Council, competent to make laws for any colony:

The term "representative legislature" shall signify any colonial legislature which shall comprise a legislative body of which one half are elected by inhabitants of the colony:

The term "colonial law" shall include laws made for any colony either by such legislature aforesaid or by her Majesty in Council:

An act of Parliament or any provision thereof, shall, in construing this act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any act of Parliament:

The term "governor" shall mean the officer lawfully administering the government of any colony:

The term "letters-patent" shall mean letters-patent under the Great Seal of the United Kingdom of Great Britain and Ireland.

2. Any colonial law which is or shall be in any respect repugnant to the provisions of any act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such act of Parliament, or having in the colony the force and effect of such act, shall be read subject to such act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No colonial law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provi-

sions of some such act of Parliament, order, or regulation as aforesaid.

4. No colonial law, passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be, or be deemed to have been, void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such governor by or on behalf of her Majesty, by any instrument other than the letters-patent or instrument authorising such governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters-patent or last-mentioned instrument.

5. Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature: provided, that such laws shall have been passed in such manner and form as may from time to time be required by any act of Parliament, letters-patent, Order in Council, or colonial law for the time being in force in the said colony.

6. The certificate of the clerk or other proper officer of a legislative body in any colony, to the effect that the document to which it is attached is a true copy of any colonial law assented to by the governor of such colony, or of any bill reserved for the signification of her Majesty's pleasure by the said governor, shall be *prima facie* evidence that the document so certified is a true copy of such law or bill, and, as the case may be, that such law has been duly and properly passed and assented to, or that such bill has been duly and properly passed and presented to the governor; and any proclamation purporting to be published by authority of the governor in any newspaper in the colony to which such law or bill shall relate, and signifying her Majesty's disallowance of any such colonial law, or her Majesty's assent to any such reserved bill as aforesaid, shall be *prima facie* evidence of such disallowance or assent.

And whereas doubts are entertained respecting the validity of certain acts enacted, or reputed to be enacted, by the legislature of South Australia: be it further enacted, as follows:—

7. All laws or reputed laws enacted, or purporting to have been enacted, by the said legislature, or by persons or bodies of persons for the time being acting as such legislature, which have received the assent of her Majesty in Council, or which have received the assent of the governor of the said colony in the name and on behalf of her Majesty, shall be, and be deemed to have been, valid and effectual from the date of such assent for all purposes whatever; provided that nothing herein contained shall be deemed to give effect to any law or reputed law which has been disallowed by her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful disallowance or repeal of any law.

## CAP. LXIV.

An Act to remove Doubts respecting the Validity of certain Marriages contracted in Her Majesty's Possessions abroad. [29th June, 1865.]

Sect. 1. *Colonial laws establishing validity of marriages to have effect throughout her Majesty's dominions. Not to give effect to marriages unless parties are competent to contract marriage.*

2. *Definition of "legislature."*

Whereas laws have from time to time been made by the legislatures of divers of her Majesty's possessions abroad for the purpose of establishing the validity of certain marriages previously contracted therein, but doubts are entertained whether such laws are in all respects effectual for the aforesaid purpose beyond the limits of such possessions: be it therefore enacted &c., as follows:—

Sect. 1. Every law made, or to be made, by the legislature of any such possession as aforesaid for the purpose of establishing the validity of any marriage or marriages contracted in such possession shall have, and be deemed to

have had, from the date of the making of such law, the same force and effect for the purpose aforesaid within all parts of her Majesty's dominions as such law may have had, or may hereafter have, within the possession for which the same was made: provided, that nothing in this law contained shall give any effect or validity to any marriage, unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same.

2. In this act the word "legislature" shall include any authority competent to make laws for any of her Majesty's possessions abroad, except the Parliament of the United Kingdom and her Majesty in Council.

## CAP. LXV.

An Act to explain the Defence Act, 1860.

[29th June, 1865.]

## CAP. LXVI.

An Act to allow the charging of the Excise Duty on Malt according to the Weight of the Grain used.

[29th June, 1865.]

Sect. 1. Commencement of act.

2. Maltster entitled to have the duty upon malt made by him charged according to the weight of the grain used.

3. Cover to be affixed to cistern.

4. Notice to be given of the steeping of grain.

5. Declaration to be given of the weight of grain to be steeped.

6. Mode of ascertaining weight of grain.

7. Mode of calculating duty on malt when charged according to weight.

8. Maltster to provide scales and weights and bushel measure.

9. Officer may weigh any grain in the malthouse of a maltster making malt under the provisions of this act.

10. Penalty where the weight of grain shall exceed declared weight.

11. Grain making into malt may be sprinkled at the expiration of ninety hours after being emptied from cistern.

12. Penalty for offences against this act.

13. Condition No. 3 in sect. 28 of the 23 & 24 Vict. c. 113, repealed, and other provisions made.

14. The 12 Geo. 1, c. 4, ss. 48 to 50, and the 3 Geo. 4, c. 18, ss. 12 to 16, and 18 and 19, relating to the exportation of malt on drawback, repealed.

15. Not to repeal provisions of other Malt Acts.

16. Continuance of act.

## CAP. LXVII.

An Act to amend the Acts relating to the Harbour of Kingstown.

[29th June, 1865.]

## CAP. LXVIII.

An Act to enable the Ecclesiastical Commissioners for England to grant Superannuation Allowances to Persons employed in their Service. [29th June, 1865.]

Sect. 1. Power to commissioners, out of their common fund, to grant retired allowances.

2. Power to grant gratuities in certain cases where officials not entitled by length of service to superannuation.

3. No superannuation to be granted unless approved by Treasury.

4. Restrictions as to grant of full superannuation allowance.

5. Under special circumstances an increase may be made to regular superannuation allowance.

6. Superannuation not to be granted to persons under sixty, except upon medical certificate.

7. Where superannuation granted to any person under sixty, he shall be liable to be recalled to service.

8. None but secretary to be deemed in service of commissioners unless admitted with a certificate from Civil Service Commissioners, &c.

9. Return of superannuations to be inserted in annual report.

## CAP. LXIX.

An Act further to amend and render more effectual the Law for providing fit Houses for the Beneficed Clergy; and for other Purposes. [29th June, 1865.]

- Sect. 1. *Extension of provisions of recited acts relating to repairing, rebuilding, or acquiring houses of residence, &c.*
2. *Governors of Queen Anne's Bounty may sell lands, &c. given to them for their general purposes.*
3. *Powers of recited acts extended to this act.*
4. *Corporations and persons under disability or incapacity authorised to convey houses and lands for parsonages.*
5. *Five of the governors may form a quorum.*

Whereas under the provisions of the several acts passed in the sessions held in the 17 Geo. 3, c. 53, the 21 Geo. 3, c. 66, the 7 Geo. 4, c. 66, and the 1 & 2 Vict. c. 23, the incumbent of a benefice is authorised and empowered, with the consents in the said acts specified, to borrow and take up at interest a sum of money exceeding one year's but not exceeding three years' net income of his benefice, for the purpose of building, repairing, or purchasing a house and other necessary buildings, or a proper site for such house and other necessary buildings, to be used as the parsonage or glebe house and offices for his benefice, and as a security for the money so to be borrowed to mortgage the glebe tithes, rent-charges, rents, and other profits and emoluments of his benefice for the term of thirty-five years, the principal so borrowed being repayable by thirty annual instalments, with interest to accrue due thereon: and whereas it is expedient to extend the provisions of the said acts and to provide for the other purposes hereinafter expressed: be it therefore enacted &c., as follows:—

Sect. 1. The incumbent of any benefice may, according to the provisions of and with the consents required by the said acts, and by any act or acts amending or referring to the same, borrow and take up at interest on mortgage as provided by the same acts, or any of them, for the purposes of the same acts or any of them, or for the purposes of the act passed in the session held in the 55 Geo. 3, c. 147, or for the purpose of purchasing any lands or hereditaments not exceeding twelve acres, contiguous to or desirable to be used or occupied with the parsonage house or glebe belonging to such benefice, or for the purpose of building any offices, stables, or outbuildings, or fences necessary for the occupation or protection of such parsonage, or for the purpose of restoring, rebuilding, or repairing the fabric of the chancel of the church of such benefice (in any case where such incumbent is or shall be liable to repair or sustain the fabric of such chancel), or for the purpose of building, improving, enlarging, or purchasing any farm house or farm buildings, or labourers' dwelling houses, with the appurtenances belonging to or desirable to be acquired for any farm or lands appertaining to such benefice, any sum or sums of money not being less than 100*l.*, and not exceeding three years' net income of such benefice; and out of the sum to be borrowed it shall be lawful to pay the charges and expenses of the architect or surveyor who shall be employed in or about any of the purposes aforesaid, and also the costs and expenses of and incidental to the preparation of the mortgage deed or deeds, and of and incidental to any purchase by the said acts or this act authorised to be made.

2. It shall be lawful for the governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, absolutely to sell and dispose of, either altogether or in parcels, and either by public sale or by private contract, for such sum or sums of money as to the said governors shall seem fair and reasonable, all houses, lands, tithes, tithe rent-charges, and hereditaments, of what nature or kind soever, which may have been, or shall hereafter be, given, devised, or conveyed to or acquired by the said governors for the purpose generally of augmenting the maintenance of the poor clergy; and the moneys to arise from every such sale shall be paid to the said governors, and the receipts of their treasurer for the time being shall be sufficient discharges for the said moneys, and shall effectually release and exonerate the person or persons paying the same from all responsibility in respect of the application thereof; and the said moneys, when so received, shall be applied and disposed

of by the said governors for the benefit and augmentation of benefices in such and the same manner, according to the rules and regulations of the said governors, as the general funds and profits of the said governors are applicable and disposable.

3. All the powers, authorities, provisions, forms, and matters in the hereinbefore-mentioned acts contained shall, except as herein otherwise is provided, extend and be applicable, *mutatis mutandis*, to all the purposes of this act and of the said hereinbefore-mentioned acts, as if the same had been respectively repeated and set forth herein.

4. It shall be lawful for the principal officer of any public department holding any messuages, buildings, lands, tenements, or hereditaments, for or on behalf of her Majesty, or otherwise for the public use or the use of such department, and for every body politic, corporate, or collegiate, and corporation aggregate or sole, and for all trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, school, charitable foundation, or other public institution, and for all other persons by the Lands Clauses Consolidation Act, 1845, empowered to sell and convey or release lands by any assurance under the hand and seal or under the common seal, as the case may be, of such principal officer, body, or corporation, or under the hands and seals or hand and seal of such trustees, guardians, commissioners, or other persons or person, to grant and convey or release, either by way of voluntary gift or of sale, to the said governors, in fee-simple or otherwise, any messuages, buildings, lands, tenements, or hereditaments to be used as and for parsonages or residences for incumbents of benefices, or the outbuildings, yards, gardens, or appurtenances thereto, or as and for sites or for enlarging sites for such parsonages or residences, or the outbuildings, yards, gardens, or appurtenances thereto; and all such assurances may be made according to the form contained in the 20th section of the 1 Vict. c. 20, or as near thereto as the circumstances of the case will admit, or in any other form which the said governors may approve; but no such assurance or assurances from the same body of persons otherwise than upon a sale for the fair value shall comprise (including the site of any buildings) more than one acre, and upon every such assurance by way of sale the purchase money may be paid to the seller or sellers, or as he or they shall appoint, and the receipt of them or him, or their or his appointees, shall be a sufficient discharge for the same, except that in the case of a sale for more than 90*l.* by a tenant for life or other person having only a partial estate, the purchase money shall be paid to and applied by two trustees, in manner provided by the 71st section of the Lands Clauses Consolidation Act, 1845.

5. To facilitate the despatch of the business of the said governors, any five of the said governors, three of whom at least shall be archbishops or bishops, shall make a quorum for the future, and be sufficient at any court for the despatch, by majority of votes, of all business of the said governors.

## CAP. LXX.

An Act to alter the Distribution of the Constabulary Force in Ireland, and to make better Provision for the Police Force in the Borough of Belfast. [29th June, 1865.]

## CAP. LXXI.

An Act to amend the Acts for the Establishment of a National Gallery in Dublin. [29th June, 1865.]

## CAP. LXXII.

An Act to make better Provision respecting Wills of Seamen and Marines of the Royal Navy and Marines. [29th June, 1865.]

- Sect. 1. *Short title.*
2. *Interpretation of terms.*
3. *Will made before entry ineffectual as to wages, &c.*
4. *Will invalid if combined with power of attorney.*
5. *Regulations for wills of seamen, &c. as to wages, &c.*
6. *As to wills made by prisoners of war.*
7. *Payment under will not in conformity with act.*
8. *Commencement of act.*
9. *Publication of Orders in Council.*

Be it enacted &c., as follows:—

Sect. 1. This act may be cited as "The Navy and Marines (Wills) Act, 1865."

2. In this act—

The term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral:

The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part in any capacity of the complement of any of her Majesty's vessels, or otherwise belonging to her Majesty's naval or marine force, exclusive of commissioned, warrant, and subordinate officers, and assistant engineers, and of Kroomen.

3. A will made after the commencement of this act by any person at any time previously to his entering into service as a seaman or marine shall not be valid to pass any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty.

4. A will made after the commencement of this act by any person while serving as a seaman or marine shall not be valid for any purpose if it is written or contained on or in the same paper, parchment, or instrument with a power of attorney.

5. A will made after the commencement of this act by any person while serving as a seaman or marine, or when he has ceased so to serve, shall not be valid to pass any wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty, unless it is made in conformity with the following provisions:—

- (1). Every such will shall be in writing, and be executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea:
- (2). Where the will is made on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be a commissioned officer, chaplain, or warrant or subordinate officer belonging to her Majesty's naval or marine or military force:
- (3). Where the will is made elsewhere than on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be such a commissioned officer or chaplain, or warrant or subordinate officer as aforesaid, or the governor, agent, physician, surgeon, assistant surgeon, or chaplain of a naval hospital at home or abroad, or a justice of the peace, or the incumbent, curate, or minister of a church or place of worship in the parish where the will is executed, or a British consular officer, or an officer of customs, or a notary public:

A will made in conformity with the foregoing provisions shall, as regards such wages, money, or effects, be deemed to be well made for the purpose of being admitted to probate in England; and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to such wages, money, or effects.

6. Notwithstanding anything in this or any other act, a will made after the commencement of this act by a seaman or marine while he is a prisoner of war shall (as far as regards the form thereof) be valid for all purposes if it is made in conformity with the following provisions:—

- (1). If it is in writing and is signed by him, and his signature thereto is made or acknowledged by him in the presence of, and is in his presence attested by, one witness, being either a commissioned officer or chaplain belonging to her Majesty's naval or marine or military force, or a warrant or subordinate officer of her Majesty's navy, or the agent of a naval hospital, or a notary public:
- (2). If the will is made according to the forms required by the law of the place where it is made:
- (3). If the will is in writing, and executed with the formalities required by the law of England in the case of persons not being soldiers in actual military service or mariners or seamen at sea.

7. Notwithstanding anything in this act, in case of a will made after the commencement of this act by any person while serving as a marine or seaman, and being either in actual military service or a mariner or seaman at sea, the Admiralty may pay or deliver any wages, prize money, bounty money,

grant or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty, to any person claiming to be entitled thereto under such will, though not made in conformity with the provisions of this act, if, having regard to the special circumstances of the death of the testator, the Admiralty are of opinion, that compliance with the requirements of this act may be properly dispensed with.

8. This act shall commence on such day, not later than the 1st January, 1866, as her Majesty in Council thinks fit to direct; nevertheless her Majesty in Council may, if it seems fit, with reference to any places out of the United Kingdom, direct that this act do not commence there, respectively, until a time after that day, and with respect to every such place the time so appointed shall be deemed the time of the commencement of this act.

9. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and if not, then within thirty days after the next meeting of Parliament.

#### CAP. LXVIII.

An Act for regulating the Payment of Naval and Marine Pay and Pensions. [29th June, 1865.]

Sect. 1. *Short title.*

2. *Interpretation of terms.*

3. *Payment of naval and marine pay and pensions according to Order in Council.*

4. *Prohibition of assignment of pensions, &c.*

5. *Prohibition of assignment of wages, &c.*

6. *Exemption from stamp duty.*

7. *Proof to be given by masters claiming pay of apprentices.*

8. *Saving for Naval Agency Act.*

9. *Saving for Naval Discipline Act.*

10. *Saving for power of Secretary of State as to pensions.*

11. *Orders in Council.*

12. *Orders in Council to be published in London Gazette.*

18. *Commencement of act.*

Be it enacted &c., as follows:—

Sect. 1. This act may be cited as "The Naval and Marine Pay and Pensions Act, 1865."

2. In this act—

The term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral:

The term "officer" means a commissioned, warrant, or subordinate officer, or assistant engineer in her Majesty's naval or marine force:

The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part, in any capacity, of the complement of any of her Majesty's vessels, or otherwise belonging to her Majesty's naval or marine force (not being an officer within the meaning of this act).

3. All pay, wages, pensions, bounty money, grants, or other allowances in the nature thereof payable in respect of services in her Majesty's naval or marine force to a person being, or having been, an officer, seaman, or marine, or to the widow or any relative of a deceased officer, seaman, or marine, shall be paid in such manner, and subject to such restrictions, conditions, and provisions as are from time to time directed by Order in Council.

4. Any assignment, sale, or contract made after the commencement of this act by an officer, seaman, or marine entitled to any naval pension—or by a person entitled to a pension as the widow of an officer—or by a person entitled to an allowance from the Compassionate Fund—or by a person entitled to any marine half pay—or in relation to such pension, allowance, or half pay, shall be void.

5. Any assignment, sale, or contract made after the commencement of this act, of or relating to any pay, wages, bounty money, grants, or other allowances in the nature thereof, payable in respect of services in her Majesty's naval or marine force to a person being, or having been, a subordinate officer, seaman, or marine, shall be void.

6. All bills, orders, receipts, and other instruments drawn, given, or made under the authority, or in pursuance of, an Order in Council, under this act, by, to, or upon any person in the service of her Majesty or of the Admiralty, shall be exempt from stamp duty.

7. If the wages of a seaman or marine are claimed under an indenture of apprenticeship by a master, they shall be paid to the seaman or marine, and not to the master, unless the master produces the indenture, with satisfactory proof that it was in full force during the period for which he claims the wages, and that the apprentice was at the time of the execution of the indenture under the age of eighteen years, and had not previously been at sea.

8. Nothing in this act shall apply to any money distributable under the Navy Agency and Distribution Act, 1864.

9. Nothing in this act shall authorise the making by Order in Council of any rule inconsistent with any provision affecting naval or marine pay or pensions contained in the Naval Discipline Act, 1864, or any act for the like purposes for the time being in force.

10. Nothing in this act shall take away or abridge any power vested in one of her Majesty's Principal Secretaries of State relative to naval pensions.

11. Her Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of any of the purposes of this act.

12. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and if not, then within thirty days after the next meeting of Parliament.

13. This act shall commence on such day, not later than the 1st January, 1866, as her Majesty in Council thinks fit to direct.

Any Order in Council for the better execution of any of the purposes of this act may nevertheless be made before that day, but not so as to commence before it.

#### CAP. LXXIV.

An Act to enable Her Majesty's Secretary of State for the War Department to lay down and use a Tramway or Temporary Railway across certain public Roads in the County of Devon.  
[29th June, 1865.]

#### CAP. LXXV.

An Act for facilitating the more useful Application of Sewage in Great Britain and Ireland.  
[29th June, 1865.]

##### SECT. 1. *Short title.*

##### 2. *Application of act.*

##### 3. *Definition of sewer authority.*

##### 4. *Powers of sewer authorities.*

##### 5. *Power of entry.*

##### 6. *Payment of expenses.*

##### 7. *Power to take lands.*

##### 8. *Compensation.*

##### 9. *Power of sewer authorities to combine.*

##### 10. *Sewer authority may take proceedings to prevent pollution of streams.*

##### 11. *Sewers not allowed to drain into any stream, &c.*

##### 12. *Power to Public Works Loan Commissioners to lend money to sewer authorities.*

##### 13. *Powers of act cumulative.*

##### 14. *Sewer authority may enter into contract for supply of sewage.*

##### 15. *Application of the 27 & 28 Vict. c. 114, to works, &c. for supply of sewage.*

##### 16. *Board of Works in Ireland to have power of Secretary of State in sewage matters.*

Whereas it is expedient to remove difficulties under which local boards and other bodies having the care of sewers labour in disposing of the sewage of their districts so as not to be a nuisance, and to give facility to such authorities to make arrangements for the application of such sewage to land for agricultural purposes: be it therefore enacted &c.,

SECT. 1. This act, for all purposes, may be cited as "The Sewage Utilization Act, 1865."

2. This act shall not extend to any part of the metropolis as defined by the act of the session 18 & 19 Vict. c. 120, for the better local management of the metropolis, and shall not,

with the exception of clause 15, extend to any parish as defined in the schedule to this act in a part of which parish the Public Health Act, 1848, and the Local Government Act, 1858, or one of such acts, is in force at the time of the passing of this act.

3. The expression "sewer authority" shall, in the several places in the schedule annexed hereto in that behalf mentioned, mean the persons or bodies of persons referred to in the first column of the schedule annexed hereto; and the term "district," in relation to a sewer authority, shall, as respects each authority, mean in the place in that behalf referred to in the second column of the said schedule.

"Local board" shall mean a local board authorised in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such acts.

4. Sewer authorities shall have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained, and shall, as respects all sewers constructed by them or under their control, whether the same were made before or after the passing of this act, have all the powers that local boards have, in respect of sewers vested in or constructed by them, under the 45th and 46th sections of the Public Health Act, 1848, the 30th section of the Local Government Act, 1858, and the 4th section of the Local Government Act, 1858, Amendment Act, 1861, subject to the provisions of the 5th and 8th sections of the last-mentioned act, and to the saving clauses in the Local Government Act, 1858, mentioned, from 68 to 74, both inclusive; and in Scotland, in addition to such of the aforesaid powers as are applicable to Scotland, all the powers contained in sect. 7 (Public Sewers) of part 4 of the General Police and Improvement (Scotland) Act, 1863.

5. The sewer authority shall have the powers of entry conferred by the 149th section of the Public Health Act, 1848, for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in the said section.

6. A sewer authority shall pay all expenses incurred by them in carrying this act into effect out of the fund or rate in the schedule in that behalf mentioned, and shall have all such powers of borrowing money on the security of such fund or rate as local boards have of borrowing money under the Local Government Act, 1858, and the acts amending that act, on the security of the funds or rates in the said acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by local boards under the said acts.

7. A sewer authority shall, for the purposes of this act, have the powers of taking lands conferred on local boards by the 75th section of the Local Government Act, 1858, and any act amending the same.

8. Full compensation shall be made, out of any fund or rate applicable to the purposes of this act, to all persons sustaining any damage by reason of the exercise of any of the powers of this act; and in case of dispute as to amount, the same shall be settled by arbitration, as provided in the Public Health Act, 1848, or any act amending the same, or if the compensation claimed do not exceed the sum of 20*l*., the same may be ascertained by and recovered before justices in a summary manner, in manner provided by the acts mentioned in this section.

9. Two or more sewer authorities, including under that expression for the purposes of this section local boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly.

10. A sewer authority, with the sanction of her Majesty's Attorney-General in England, and of the Attorney-General for Ireland in Ireland, and of the Lord Advocate in Scotland, may, either in its own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as it may deem advisable, for the purpose of protecting any watercourse within its jurisdiction from pollutions arising from sewage either within or without its district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be ex-

penses properly incurred by the sewer authority in carrying into effect the purposes of this act.

11. Nothing contained in this act, or in the acts referred to therein, shall authorise any sewer authority to make a sewer so as to drain direct into any stream or watercourse.

12. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may advance to any sewer authority, upon the security of any rate applicable to the purposes of this act, without any further security, such sums of money as may be recommended by one of her Majesty's Principal Secretaries of State, to be applied by such authority in carrying into effect the purposes of this act.

13. All powers given by this act shall be deemed to be in addition to, and not in derogation of, any other powers conferred on any sewer authority by act of Parliament, law, or custom; and the sewer authority may exercise such other powers in the same manner as if this act had not passed.

14. The sewer authority of any place may from time to time, for the purpose of utilizing its sewage, agree with any person or body of persons, corporate or unincorporate, as to the supply of such sewage, and works to be made for the purpose of that supply, and the parties to execute the same and

to bear the costs thereof, and the sums of money, if any, to be paid for that supply; provided that no contract shall be made for the supply of sewage for a period exceeding twenty-five years.

15. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorised by the Land Improvement Act, 1864, and the provisions of that act shall apply accordingly.

16. The Commissioners of Public Works in Ireland shall, in respect to any sewage authority or sewer matter in Ireland, have and exercise all the powers conferred by this act, or any act incorporated herewith, on one of her Majesty's Principal Secretaries of State; and all applications by this act, or any act incorporated herewith, authorised or directed to be made to one of her Majesty's Principal Secretaries of State in respect to sewage matters, or the powers conferred by this act on sewage authorities, shall in Ireland be made to the Commissioners of Public Works; and all orders made on such applications by said commissioners shall have the same force and effect as orders made by one of her Majesty's Principal Secretaries of State on similar applications in England and Scotland.

SCHEDULE.  
ENGLAND AND WALES.

<i>Description of Local Authority.</i>	<i>Description of Places.</i>	<i>Rate or Fund out of which Expenses to be paid.</i>
The mayor, aldermen, and burgesses acting by the council.	In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a local board.	The borough fund or borough rate.
The commissioners, trustees, or other person intrusted by any local act of Parliament with powers of improving, cleansing, lighting, or paving the town.	The boroughs of Oxford and Cambridge, and any town or place not included within the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local act with powers of improving, cleansing, lighting, or paving any town.	Any rate leviable by the commissioners, trustees, or other persons.
The vestry, select vestry, or other body of persons acting by virtue of any act of Parliament, prescription, custom, or otherwise, as or instead of a vestry, or select vestry.	In parishes not within the jurisdiction of any sewer authority hereinbefore mentioned, and in which a rate is levied for the maintenance of the poor.	The poor rate.

SCOTLAND.

The town council . . . .	Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The revenue of the burgh, or any rate applicable to sewers leviable by the town council.
The police commissioners or trustees.	In places where police commissioners or trustees exercise the functions of police commissioners or trustees under any general or local act.	Any rate leviable by the commissioners or trustees, or any fund belonging to them.
The parochial board . . .	Any town or village not included in the above descriptions.	The poor rate.

IRELAND.

The right hon. the lord mayor, aldermen, and burgesses.	The city of Dublin . . . . .	The district sewer rate.
The mayor, aldermen, and burgesses.	Towns corporate or boroughs (with the exception of Dublin).	Any rate leviable by the town council, or any fund belonging to them, applicable in the whole or in part to the making or repairing of sewers within their jurisdiction.
The town commissioners or other governing body.	Towns having town commissioners under the 9 Geo. 4, c. 82, or the 17 & 18 Vict. c. 103, or any acts amending the same, or having commissioners or other governing body under any local act.	Any rate leviable by these bodies, applicable in the whole or in part to the making or repairing of sewers within their jurisdiction.
The board of guardians or any committee thereof appointed by the board.	Any town or village in any union not included in the above descriptions.	The poor rate; but the expenses to be charged only on the electoral division in which the town or village is situated.

## CAP. LXXVI.

An Act for confirming, with Amendments, certain Provisional Orders, made by the Board of Trade, under the General Pier and Harbour Act, 1861, relating to Girvan, M'evaglissey, and Stornoway. [29th June, 1865.]

## CAP. LXXVII.

An Act to amend the Act of the 27 & 28 Vict. c. 64, commonly called "The Public House Closing Act, 1864." [29th June, 1865.]

Sect. 1. *Short title.*

2. *Power to justices to grant licences to licensed victuallers and refreshment housekeepers suspending operation of recited act.*
3. *Power to withdraw such licence.*
4. *Act to be in force in certain districts, &c.*
5. *Justices of the peace to grant licences.*
6. *Act to be construed with recited act.*

Whereas it is expedient to amend the Public House Closing Act, 1864:" be it therefore enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Public House Closing Act, 1865."

2. It shall be lawful for the licensing justices at the time of granting or renewing any licence, upon the production of such evidence as they shall deem sufficient to shew that it is necessary or desirable, for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, if in the discretion of such justices, they shall think fit, to grant to any licensed victualler or keeper of a refreshment house whose place of business is in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, a licence exempting him from the provisions of the hereinbefore-mentioned act between the hours of two and four o'clock in the morning, or any part of such hours, during such days, times, or hours as shall be specified in such licence; and no licensed victualler or keeper of refreshment house to whom such licence has been granted under this act shall be subject to any penalty for a contravention of the hereinbefore-mentioned act during the days or times to which such licence extends, but he shall not be exempted by such licence from any penalty to which he may be subject under any other act of Parliament; provided that the printed notice stating the days and special hours during which, and the class of persons for whom, the house is open under such licence, shall be affixed in a conspicuous position outside the house.

3. It shall be lawful for such justices, from time to time, as and when it may seem fit to them, either to withdraw such licence altogether, or to alter, vary, or amend the same in such manner as such justices may deem necessary or expedient.

4. The said act, as herein amended, shall be in force in such districts under the operation of the Public Health Act, 1848, or the Local Government Act, 1858, as adopt the same; and local boards of health established under or by virtue of the said Public Health Act, 1848, and local boards established under or by virtue of the said Local Government Act, 1858, may adopt the said Public House Closing Act, 1864, in the same manner; and the same shall come into operation at the same time as is provided for the adoption and coming into operation of that act by corporate boroughs, or boards of improvement commissioners; provided that this section shall not apply to any district which is a corporate borough, or within the jurisdiction of a board of improvement commissioners.

5. So much of the eighth clause of the said recited act as defines the local authority to be a commissioner, superintendent, or other chief officer of police shall be repealed, and instead thereof the local authority shall be, in any district, city, or town where petty sessions are held, except in the metropolitan police district, two justices of the peace sitting in petty sessions, and in any other district, city, or town, two justices of the peace acting in the district, city, or town.

6. This act shall be deemed, construed, and taken as part of the said hereinbefore-mentioned act.

## CAP. LXXVIII.

An Act to enable certain Companies to issue Mortgage Debentures founded on Securities upon or affecting Land, and to make Provision for the Registration of such Mortgage Debentures and Securities. [29th June, 1865.]

Sect. 1. *Short title.*

2. *Extent of act.*
3. *No company to avail themselves of act unless it shall comply with provisions herein named.*
4. *Power to company to borrow money on mortgage debentures.*
5. *Nature of securities on which debentures may be founded.*
6. *Securities on which companies wish to issue debentures to be produced to registrar of titles, &c. for registry.*
7. *Register of securities to be established in office of land registry.*
8. *Registrar of titles, &c. to conduct business of register.*
9. *Upon deposit with registrar of securities held by company, and the deeds relating thereto, and certificate of company, and declaration of surveyor, registrar may register deed creating security.*
10. *Form of declaration of surveyor.*
11. *Power to company to issue debentures not exceeding amount of registered securities, &c.*
12. *Before company shall register any mortgage debentures, it shall file a return containing particulars herein named.*
13. *Company may issue new debentures in lieu of those paid off.*
14. *Registered securities charged with payment of debentures, and not applicable for any other purpose until discharged from registration.*
15. *Rights of holders of mortgage debentures.*
16. *Proceedings on redemption of securities.*
17. *Owner of registered security, upon default of company, may obtain the discharge thereof from company's debentures.*
18. *Registrar to determine fees.*
19. *Collection of fees.*
20. *Inspection of register.*
21. *Company to make quarterly returns to registrar.*
22. *Quarter days for purposes of act.*
23. *Quarterly returns made to registrar to be as in Form (C.) in schedule, and to contain particulars herein named.*
24. *Estimate for quarterly returns of amount or value of annuities.*
25. *Total amount of registered securities.*
26. *Form of mortgage debenture.*
27. *Company to keep "register of securities."*
28. *Terms on which mortgage debentures may be issued.*
29. *Mortgage debentures to be numbered.*
30. *Indorsement to be made upon mortgage debenture.*
31. *List of mortgage debentures to be kept by company.*
32. *Register of mortgage debentures.*
33. *Registration of mortgage debentures.*
34. *Indorsement of registrar.*
35. *No notice of trust receivable by company, &c.*
36. *Entry in register of discharge of mortgage debenture.*
37. *Transfer of mortgage debenture.*
38. *Entry of transfers by deed of mortgage debentures to be made by company.*
39. *Stamp Acts applied to stamps under act.*
40. *Further powers of investment to trustees.*
41. *Power to appoint receiver.*
42. *Terms on which power may be exercised.*
43. *Saving rights of mortgagees to sue.*
44. *Application for receiver.*
45. *Removal of receiver.*
46. *Powers and duties of receiver.*
47. *Court may stay order for receiver upon terms.*
48. *Company not to issue mortgage debentures on ceasing to be entitled to avail itself of act.*
49. *Penalties in such event.*
50. *How penalties may be recovered.*
51. *Registrar, &c. not personally liable for executing act.*



**52. Not exempt from Joint-stock Companies Act.****53. Interpretation of terms.**

Whereas it is expedient that provision should be made whereby such companies as are hereinafter defined may be enabled to issue mortgage debentures founded upon the security of certain descriptions of property as hereinafter defined, and for the registration in the office of land registry of such mortgage debentures and securities: be it therefore enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Mortgage Debenture Act, 1865."

2. This act shall extend and apply to, and the powers hereby conferred may be exercised by, all such companies incorporated and carrying on business under the Companies Act, 1862, or under any act of Parliament, as now or hereafter may be entitled to advance money on the security of land; and in the construction of this act the expression "the company" means any company to which this act applies, and which shall for the time being be availing itself of the provisions of this act.

3. No company shall be entitled to avail itself of this act, unless it shall comply with the following provisions:—

First, the company must, under its act of Parliament or memorandum of association, be limited to one or more of the following objects:—

1. The making of advances of money upon any of the following securities:—
  - (a). Lands, messuages, hereditaments, and real property, and all estates and interests therein:
  - (b). Rates, dues, assessments, and impositions upon the owners or occupiers of lands or real property imposed by or under the authority of any act of Parliament, public or private, royal charter, commission of sewers or drainage, or other sufficient legal authority:
  - (c). Charges and securities upon or affecting lands, messuages, hereditaments, and real property, executed, made, given, or issued under the authority of any act of Parliament, public or private:
2. The borrowing of money on transferable mortgage debentures, or on one or more of the securities above mentioned:

Provided that any company already constituted under the Companies Act, 1862, for the purposes of making advances on real securities, and whose memorandum of association includes, but is not limited to, the objects hereinbefore specified, may, by special resolution, in accordance with the provisions of that act, alter its memorandum for the purpose of limiting and so as to limit its objects and business to those so specified; and such company shall thereupon be and become a company constituting and carrying on business under such altered memorandum; and on its being shewn to the satisfaction of the registrar hereinafter mentioned that such alteration has been made, and that all obligations, if any, entered into by the company in respect of the business which prior to such special resolution it was empowered to transact, other than the business to which it will be limited after the passing of such special resolution, have been discharged, and that the articles of association of the company are in accordance with the altered memorandum, such company shall be deemed to be a company within this act, and entitled to the benefits thereof.

Second. The company must have a paid-up capital of not less than 100,000*l*.

Third. Each share must be of the nominal value of not less than 50*l*, of which not less than one-tenth nor more than one-half must have been paid up.

4. Subject to the provisions and restrictions of this act, the company may from time to time borrow money upon mortgage debentures to be issued by it under the authority of this act.

5. The securities upon and in respect of which such mortgage debentures may be founded and issued shall be securities affecting property in England or Wales of the following descriptions:—

- (a). Lands, messuages, hereditaments, or real property, or some estate or interests therein:
- (b). Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, heredita-

ments, or real property, imposed by or under the authority of any act of Parliament, public or private, royal charter, commission of sewers or drainage, or other sufficient legal authority:

- (c). Charges upon or affecting lands, messuages, hereditaments, or real property executed, made, given, or issued under the authority of any act of Parliament, public or private:

But, from the securities described in paragraph (a) shall be excepted securities upon mines or mineral property, quarries, brickfields, and factories, mills, and other buildings or works for manufacturing purposes, and also securities upon leasehold estates, determinable upon a life or lives, and not renewable or held for a term, of which, at the date of the security less than fifty years shall be unexpired, or which are subject to any rent beyond a nominal rent or a ground rent.

In construing this act the word "securities" shall be deemed to mean such securities as above defined and restricted, and no others.

6. When and from time to time as the company may desire to use any securities in their possession for the purpose of founding and issuing mortgage debentures thereon, they shall produce the deeds or instruments creating such securities, duly executed and stamped, to the office of land registry established by the 25 & 26 Vict. c. 53, in order to the same being duly registered in such office of land registry, in accordance with the provisions of this act.

7. For the purposes of such registration there shall be established in such office of land registry, in respect of every company issuing mortgage debentures under this act, a register with the name of the company attached, which shall be called a register of securities under the Mortgage Debentures Act, 1865.

8. The business of the registration shall be conducted in such office in accordance with such rules and regulations as the registrar, with the sanction of the Lord Chancellor, from time to time shall prescribe.

9. Upon production to, and deposit with, the registrar of the deeds or instruments purporting to be duly executed and stamped as aforesaid, together with a certificate under the common seal of the company and the hands of one or more directors and of the secretary or accountant of the company, in the form or to the effect of Form (A.) in the schedule hereto, and in the cases hereinafter mentioned of the certificate of a surveyor as hereinafter provided, the registrar shall enter in the proper register of securities the date of every such deed or other instrument, its nature, whether mortgage, grant of annuity, rent-charge, or other security, the amount of the principal money or the amount and duration of the annuity thereby secured, and the tenure, extent, and situation of the property upon which the security is taken: provided always, that the registrar shall not register any deed or instrument relating to or affecting any property not situate in England or Wales.

10. The registrar shall not register any deeds or instruments for the purposes of this act until there shall have been produced for his inspection, and left to be registered, a voluntary declaration made by a surveyor or valuer, approved by the Inclosure Commissioners for England and Wales, in the Form (B.) in the said schedule hereto, or to the like effect; but when such deeds or instruments relate exclusively to any of the securities described in sect. 5 (b and c), the report of the surveyor or valuer shall state only the value at the time of his report of the securities to be valued. There shall also be delivered with the before-mentioned deeds or instruments a schedule, under the hand of the secretary or one of the directors of the company, of the deeds and documents which were delivered to the company at the time when the security was executed to them, which deeds or documents shall be deposited with the registrar, to be retained by him until withdrawn as hereinafter provided.

11. Upon the securities so from time to time registered, the company may found and issue its mortgage debentures, but so that the aggregate principal sum secured by all the mortgage debentures shall never exceed at any one time the then total amount (to be ascertained in the manner hereinafter provided) of the registered securities of the company, and also shall never exceed ten times the amount for the time being uncalled of its subscribed share capital.

12. Before any company entitled to issue mortgage debentures under the provisions of this act shall register any

such mortgage debentures under the provisions of this act, such company shall file in the office of the land registry a return containing the following and such other particulars as the registrar may from time to time require, which return shall be under the hand of one at least of the directors of the company and the secretary:

- (a). The amount of the nominal capital of the company, and the number and amount of shares into which the same is divided:
- (b). The amount per share and the aggregate amount paid up on the shares:
- (c). The assets or property of the company at the date of the return, and how invested:
- (d). The names, addresses, and occupations of the directors and auditors of the company:
- (e). The registered office of the company.

13. If and whenever any of such mortgage debentures shall be paid off by the company, the company may issue new mortgage debentures in lieu thereof, and so from time to time, provided that the aggregate principal sum secured by all the mortgage debentures then issued and outstanding shall not exceed either of the before-mentioned limits.

14. All the registered securities for the time being of the company shall be charged with the payment of the principal moneys and interest from time to time payable upon or in respect of all the mortgage debentures of the company for the time being issued and outstanding; and no registered security, until discharged therefrom as hereinafter provided, shall be applicable to or available for any other purpose than the satisfaction of such principal moneys and interest, or be transferred, disposed of, or otherwise dealt with by the company, unless and until the same shall have been discharged from registration in the manner hereinafter provided: provided, nevertheless, that such registration shall not prevent the company from receiving, applying, and giving a valid discharge for any interest which may from time to time be receivable upon or in respect of any such security, unless where a receiver shall have been actually appointed under the provisions of this act.

15. The persons from time to time entitled to the company's mortgage debentures shall, proportionally, according to the amount of the moneys secured thereby, be entitled one with another to the benefit of the registered securities of the company upon which such mortgage debentures are founded, without any preference one above another by reason of priority of the date of any such mortgage debenture or otherwise.

16. Whenever any person who has executed a security which has been registered under the provisions of this act is entitled to redeem such security, and has given notice to the company of his intention so to do, the company shall thereupon, and before the day appointed for the redemption, make application to the registrar for the purpose of having such security freed and discharged from the charge of the mortgage debentures issued by the company, and upon a security of at least equal value, as certified by a declaration of the surveyor or valuer before mentioned, being produced to him for registration and being registered accordingly, or its being shewn to his satisfaction that at least an equivalent of mortgage debentures issued under the provisions of this act has been cancelled, he shall allow the same to be so freed and discharged, and shall cause an entry to be made in the register of securities of the said security being discharged, and shall redeliver to the company the several deeds or instruments to which such security relates, and which were delivered to the registrar for registration, under the provisions hereinbefore contained, and such entry shall be conclusive evidence of such discharge.

17. If the company shall not have procured such discharge on or before the day appointed for redemption, the mortgagor or other person entitled to redeem such security may apply to the High Court of Chancery by summons, calling upon the company to shew cause why such security is not so discharged, and upon hearing such summons the judge shall appoint a day by which the discharge shall be obtained, and in default thereof shall order that the amount of principal and interest money due upon such security shall, by a day to be named in the order, be paid into the Bank to the credit of the Accountant-General of the Court of Chancery to the account of the company's mortgage debentures, and shall make such order as to the costs of and incidental to the application as the court may deem just.

Upon production to, and deposit with, the land registrar of such order, together with the Accountant-General's certificate of such payment into court as aforesaid, the registrar shall make an entry in the proper register of securities of the discharge of such security from the company's mortgage debentures, and shall deliver to the person named in such order the several deeds and instruments to which such security relates, and which were delivered to the registrar under the provisions herein contained.

Upon the company proving to the satisfaction of the court, by the production of a certificate of the registrar, either that a security at least equal in value to the amount so paid into court as aforesaid has been registered as aforesaid, or that an equivalent amount of the company's mortgage debentures has been cancelled, the court shall direct the payment out of court to the company of the amount so paid in, together with any dividends that may have accrued due thereon in the meantime.

18. There shall from time to time be paid by the company or others, in respect of business transacted under this act by the registrar, such fees as the registrar, with the sanction of the Lord Chancellor, from time to time prescribes; and there shall also be paid by the company to the registrar, the assistant registrar, and the other officers and servants of the office respectively, such remuneration for their respective services in the execution of this act as the Lord Chancellor from time to time sanctions.

19. The following rules shall be observed with respect to the collection of fees:—

- (a). All fees so payable shall be received by stamps denoting the amount of fees payable, and not in money:
- (b). When a fee is payable in respect of a document, a stamp denoting the amount of the fee shall be affixed to the document and properly cancelled:
- (c). The Commissioners of Inland Revenue shall provide everything that is necessary for the collection of the moneys by this act directed to be paid by stamps.

20. Subject to such regulations and on payment of such fees as the registrar, with the sanction of the Lord Chancellor, from time to time prescribes, any person may inspect and make copies of and extracts from the register.

21. When and so long as the company issues any mortgage debentures under this act, and from time to time, so long as any mortgage debenture so issued remains outstanding, the company shall, within ten days after every quarter day as hereinafter defined, make out and deliver to the registrar the quarterly return by this act prescribed; and every quarterly return shall be verified by the statutory declaration of two directors, and the manager, secretary, or accountant of the company.

22. The 31st March, the 30th June, the 30th September, and the 31st December in every year, shall be the quarter days for the purposes of this act.

23. Every quarterly return to be made by the company to the registrar shall be in the form set forth in Form (C.) in the schedule to this act, or as near thereto as circumstances may admit, and shall contain, with reference to the then last quarterly day, the following particulars:—

- (a). An account of all the securities of the company's at that time registered, shewing the aggregate of all principal sums remaining secured thereby, and unpaid, and shewing also the aggregate amount or the aggregate estimated value of all annuities and other periodical payments secured thereby:
- (b). An account shewing the aggregate amount and the estimated value of the company's other investments, and also the total number and aggregate nominal amount of the shares of the company's capital held by persons registered in the company's books as the holders thereof, and the aggregate amount paid up in respect of those registered shares, and the aggregate amount remaining to be paid thereon:
- (c). The numbers and dates of the several mortgage debentures issued by the company and remaining in force, and the several principal sums secured by those mortgage debentures respectively, and the aggregate amount thereof, and the rates of interest payable on those principal sums respectively, and the time or times for the repayment of those principal sums respectively.

24. The amount or value of the annuities and other periodical payments to be comprised in the quarterly returns shall be ascertained or estimated by an actuary approved by the registrar.

25. The aggregate of all principal sums remaining secured by the registered securities, together with the aggregate amount or value of the said annuities as so ascertained or estimated, shall for the purposes of this act be deemed to be the total amount for the time being of the registered securities of the company.

26. Every mortgage debenture from time to time issued by the company shall be a deed under the common seal of the company, duly stamped, as a mortgage for the amount secured, and bearing the signatures of at least two of the directors, and the counter-signature of the manager, secretary, or accountant of the company, and shall be in accordance with the Form (D.) in the schedule to this act, or as near thereto as circumstances admit.

27. The company shall keep a register, to be called the "register of securities," in which shall be entered the date of every deed or other instrument registered at the land registry for the purposes of this act, its nature, whether mortgage, grant of annuity, rent-charge, or other security, the amount of the principal money, or the amount and duration of the annuity thereby secured, the tenure, extent, and situation of the property upon which the security is taken, and if there are any charges which take priority of the company's security, then the amount of such prior charges.

28. The mortgage debentures shall be for the payment of principal sums at a fixed time to be named therein, not less than six months nor exceeding ten years from the date, with interest thereon in the meantime, at such rate as may be agreed, payable half-yearly or otherwise; and no mortgage debenture shall be issued for a less principal sum than 50*l*.

29. The mortgage debentures shall be numbered consecutively, beginning with number one, and every mortgage debenture shall be distinguished by its appropriate number; and notwithstanding the cancellation, loss, or destruction of a mortgage debenture, no other mortgage debenture shall bear the number of that so cancelled, lost, or destroyed.

30. There shall be indorsed upon every mortgage debenture issued under the provisions of this act—

- (a). The amount of the nominal capital of the company issuing the same:
- (b). The number and amount of the shares into which such capital is divided:
- (c). The number of shares issued and the amount paid up in money upon each share so issued:
- (d). The amount of the registered securities of the company as declared by the last quarterly return:
- (e). The registered office of the company:

Provided that any inaccuracies or omissions in such indorsements shall not affect or invalidate the debenture.

31. A book containing a list of mortgage debentures shall be kept by the company's secretary, and on the issue of any mortgage debenture an entry of the number and date thereof, and of the principal money secured thereby, and the name, description, and residence of the person to whom it is issued shall be entered in such book.

32. There shall also be established and kept in the office of land registry, by or under the direction of the registrar, in respect of every company issuing mortgage debentures under this act, a register of the mortgage debentures of the company.

33. When any mortgage debenture of the company is duly executed and stamped, the company shall produce it to the registrar, in order to its being registered, and thereupon the registrar shall enter in the register of mortgage debentures the number and the date of the mortgage debenture, the amount of the principal money thereby secured, and the time or times for repayment of the principal money thereby secured, and shall make on the mortgage debenture an indorsement stating the day on which the mortgage debenture was produced to him for registration, and of the page of the book in which the entry thereof is made; and without such an indorsement no mortgage debenture shall be a charge under this act upon the registered securities of the company.

34. The indorsement of the registrar on any mortgage debentures as hereinbefore mentioned shall be conclusive evidence that it is a mortgage debenture duly registered under the provisions of this act.

35. No notice of any trust in respect of any mortgage debentures shall be receivable by the company or the registrar.

36. When a mortgage debenture is produced by the company to the registrar, with a receipt for the moneys secured thereby indorsed thereon, signed and stamped, he shall make in the register of mortgage debentures an entry of the discharge thereof.

37. Every mortgage debenture may be transferred by indorsement in the Form (E.) in the schedule to this act, or to the like effect.

38. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the company's secretary, and thereupon the secretary shall make an entry thereof in a transfer book; and after the entry, the transfer shall entitle the transferee to the full benefit of the original mortgage debenture, so far as it is then in force; and no person having made the transfer shall have power to make void, release, or discharge the mortgage debenture so transferred, or any money thereby secured; and for the entry the company may demand not exceeding 2*s*. 6*d*.; and, until the entry, the company shall not be in any manner responsible to, or bound to take notice of, the transferee in respect of the mortgage debenture.

39. That several acts from time to time in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall apply to the stamps to be provided in pursuance of this act, and to documents on which the stamps are impressed, and to collecting and securing the sums of money denoted by stamps, and to preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if the provisions were in this act repeated, and specially enacted, with reference to those stamps and sums of money respectively.

40. In all cases in which, by the instrument creating the trust, trustees have a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by, or acting under, the authority of an act of Parliament, they may invest such trust moneys on the security of mortgage debentures duly issued under, and in accordance with, the provisions of this act.

41. Any person for the time being entitled to any mortgage debenture of the company shall be empowered from time to time to enforce the payment of any arrears of interest or principal (as the case may be) due on such mortgage debenture, by procuring the appointment of a receiver in the manner and subject to the conditions hereinafter mentioned.

42. If within seven days after the interest accruing upon any mortgage debenture has become payable, and after demand thereof in writing made upon the company by the person entitled thereunto, such interest be not paid, or if within three weeks after the principal money secured by any mortgage debenture has become payable, and after demand thereof in writing made as aforesaid, such principal money be not paid, the person at the time entitled to the receipt of such interest or principal respectively may apply for the appointment of a receiver, as hereinafter provided.

43. No such application shall in any way prejudice or affect the right of any person entitled to any such mortgage debenture to sue for any such interest or principal money, as the case may be, in any court of law or equity.

44. Every application for a receiver in the cases aforesaid may be made to the High Court of Chancery by petition or by summons at chambers, and on any such application the Court of Chancery may appoint a receiver to act on behalf of the applicant and the other persons entitled to the company's mortgage debentures.

45. The court may also remove the receiver, and appoint another in his stead, and so from time to time, and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit.

46. Subject to any such orders and directions, the receiver shall be entitled to receive or recover the whole, or a competent part, of the principal moneys, instalments, annuities, interest, and other moneys from time to time payable to the company upon or in respect of their registered securities, and also any moneys standing to the account of the company's mortgage debentures, under the provision of sect. 17, until the principal and interest due on all the debentures issued by the company,

together with all costs, including the reasonable and proper charges of such receiver, shall have been fully paid; and upon such appointment being made, and notice thereof to the several persons liable upon such registered securities, all such moneys from time to time payable upon or in respect of such registered securities shall be paid to, and received or recovered by, such receiver; and the receiver shall apply the same, as from time to time received or recovered by him, first to the payment of all such costs, and afterwards to the discharge and payment of all interest, or principal and interest, as the case may be, due upon such mortgage debentures; and after such costs, and such interest, or principal and interest, shall have been fully paid, the power of such receiver shall cease.

47. The court may order, as to any of the above-mentioned powers and duties, that the receiver shall not exercise the same without the sanction or further direction of the court; and the court may, at any time after an order for the appointment of a receiver has been made, make an order staying the same, either altogether or for a limited time, on such terms, and subject to such conditions, as it may deem fit.

48. In case any company shall cease to be entitled to issue mortgage debentures under this act, such company shall nevertheless have the powers and be subject to the provisions of this act with respect to all mortgage debentures then issued and outstanding; but no mortgage debentures shall be issued or renewed by such company upon any ground or pretence whatever after it shall have ceased to be so entitled.

49. In case any company which shall not at the time being be entitled to avail itself of the provisions of this act shall issue mortgage debentures under, or purporting to be under, the provisions of this act, or in case any company entitled to avail itself of the provisions of this act shall at any time issue mortgage debentures for an aggregate principal sum exceeding the limit to which at the time being they are entitled to issue, any person who shall knowingly or wilfully be concerned in such issue shall in every such case forfeit the sum of 500*l*.

50. Every penalty hereinbefore provided may be sued for and recovered by any person whosoever will sue for the same by action in any of the superior courts of law in England or Ireland or Scotland, according as the offence has been committed in either of those parts of the United Kingdom, together with full costs of suit.

51. No person, being the registrar, assistant registrar, or other officer or servant of the office of land registry, shall be liable to any action, suit, or other proceeding, or any claim or demand, by reason of anything done bonâ fide by him in the execution of this act.

52. This act shall not exempt the company from the provisions of any act relating to joint-stock companies, and applicable to the company.

53. In the construction of this act all words meaning or applying to individuals only shall apply, mutatis mutandis, to corporations also.

### THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

#### FORM (A.)

*Form of Return to be made by the Company on Application to Registrar to register Securities.*

Date of Company's Mortgage or other Security, and distinguishing Number of Letter.	Nature of Security, whether Mortgage, Grant of Annuity, Rent-charge, or other Security.	The Amount of Principal Money secured, or, if Rent-charge or Annuity, the Amount and Duration thereof, and the Annual or other Periodical Payment to be made on account thereof.	Tenure, whether Freehold, Copyhold, or Leasehold.	If the Company's Charge is upon any of the Securities comprised in Sect. 5 (a), set out the Extent and Situation of the Property on which the Mortgage or other Security is charged; if Land, state the Acreage, Parish, and County; if Houses, state the Town, Street, and No., if any, in addition to Parish and County.	Nature of the Mortgages or Grantors' Interest therein.	The Nature and Amount of the Prior Charges thereon (if any); if more than One Charge, set out each Charge separately.	If the Company's Charge is upon any of the Securities comprised in Sect. 5 (b) and (c), set out the Nature thereof, the Total Amount of the Principal Money originally advanced by the Company, and the Amount unpaid at the Date hereof, and the Authority, statutable or other, under which the same is issued.

We hereby certify that the above return is correct.

A. B.  
C. D.

#### FORM (B.)

*Form of Surveyor's or Valuer's Declaration.*

[Here insert a copy of the return to be made by the company on application to register securities, distinguishing each security by a separate letter or number.]

I, —, of —, do solemnly and sincerely declare, that the information above contained with respect to the security numbered or lettered —, is, to the best of my information and belief, correct, and that the value of the property above described (and, if the borrower's interest is of a limited nature, the value of the borrower's estate and interest or the property above described), exceeds the amount of £—, the advance made by the company in respect thereof (if there are prior charges, and of the prior charges thereon), to the extent of one-third at least of such value.

[A separate declaration may be made in respect of each security, and where the mortgage or charge is secured exclusively upon any of the securities comprised in sect. 5 (b and c), omit from the word "declare" to the end, and insert "to the best of my information and belief the security above described, and numbered —, is now of the value of £—."]

#### FORM (C.)

*Form of Quarterly Return.*

*Mortgage Debenture Act, 1865.*

The first quarterly return of the — Company, with reference to the 30th December, 1865.

The registered Securities of the Company.

1. Aggregate securities under clause 5— <i>a</i> . . .	£150,000
2. Aggregate securities under clause 5— <i>b</i> . . .	20,000
3. Aggregate securities under clause 5— <i>c</i> . . .	10,000
	<u>£180,000</u>

4. Other investments (to be specifically enumerated)	16,500
5. 40,000 shares of 50 <i>l</i> . each, held by registered holders . . .	£2,000,000
Paid up thereon . . .	200,000

Remaining unpaid thereon . . . £1,800,000

#### LIABILITIES.

*Mortgage Debenture issued and in force.*

No.	Date.	Yearly Rate per Cent. of Interest.	Time for Repayment of Principal.	Principal Sum secured.
1	Aug. 1, 1865	Four . . .	Aug. 1, 1869	£10,000
2	Aug. 1, 1865	Four . . .	Aug. 1, 1869	5,000
3	Aug. 10, 1865	Three and three-quarters, and so on.	Aug. 10, 1871	20,000
			Total - £	

We hereby certify that the above return is correct.

A. B.  
C. D.

FORM (D.)

*Form of Mortgage Debenture.*

The — Company.

Mortgage Debenture, No. —.

By virtue of the Mortgage Debenture Act, 1865, we, the — Company, in consideration of £ —, paid to us by A. B., of —, do hereby charge all the registered securities of the company with the payment to the said A. B., his executors, administrators, and assigns, of the sum of £ —, and interest thereon at the rate of —, which sum of £ — is to be paid and payable to the said A. B., his executors, administrators, and assigns, at the — [place], on the — day of —, with interest on the same at the rate of — per cent. per annum, payable half-yearly, at said place, on every — day of —, and — day of —, and we hereby undertake to pay the said sum of £ — and interest at the rate aforesaid, as above mentioned.

Given under our common seal, this — day of —.

A. B., Director.

C. D., Director.

Countersigned, G. F., Secretary.

Registered.

FORM (E.)

*Form of Transfer on Mortgage Debenture.*

I, A. B., of —, in consideration of £ —, [state true consideration], hereby transfer to C. D., of —, his executors, administrators, and assigns, the within mortgage debenture.

(signed) A. B.

CAP. LXXIX.

An Act to provide for the better Distribution of the Charge for the Relief of the Poor in Unions. [29th June, 1865.]

- Sect. 1. *So much of sect. 26 of the 4 & 5 Will. 4, c. 76, as requires parishes in unions to defray expenses of their own poor repealed; and expenses thenceforth incurred to be charged to the common fund.*
2. *Guardians in unions may obtain orders of removal in respect of paupers settled elsewhere.*
3. *Guardians may defend and may appeal against orders of removal.*
4. *Signature and service of notices and other documents.*
5. *Guardians empowered to call for books and papers from the overseers.*
6. *Guardians may remove without orders where there is consent.*
7. *Penalty on paupers removing after order of removal.*
8. *One year to be substituted for three years in sect. 1 of the 24 & 25 Vict. c. 55.*
9. *Costs of prosecutions to be charged to the common fund.*
10. *Provision for deaths in the workhouse.*
11. *Poor-law board to make all requisite orders.*
12. *Computation of the charges on the common fund.*
13. *Saving of settlements in other respects.*
14. *Unions, &c. under local acts enabled to avail themselves of this act.*
15. *Calls for money in advance to be made on the overseers of the several parishes.*
16. *Interpretation of terms.*
17. *Short title.*

Whereas it is expedient to make provision for the better distribution of the charge for the relief of the poor in unions than is by law now established: be it therefore enacted &c., as follows:—

Sect. 1. From and after the 25th March, 1866, so much of the 26th section of the 4 & 5 Will. 4, c. 76, as requires that each of the parishes in a union formed under the authority of that act shall be separately chargeable with and liable to defray the expense of its own poor, whether relieved in or out of the workhouse of such union, shall be repealed; and all the cost of the relief to the poor, and the expenses of the burial of the dead body of any poor person under the direction of the guardians, or any of their officers duly authorised, in such union thenceforth incurred, and all charges thenceforth incurred by the guardians of such union in respect of vaccina-

tion and registration fees and expenses, shall be charged upon the common fund thereof.

2. When any pauper relieved in any such union shall be settled in any parish situated in another union or subject to a board of guardians, and shall not be exempt from removal by reason of any provision of the law, the guardians of the union to which such pauper shall be chargeable may obtain an order of removal addressed to the guardians of the union or parish, or the overseers of the parish, as the case may require, in which such pauper shall be settled, and the guardians of such last-mentioned union or parish shall receive such pauper in like manner and subject to the like incidents and consequences as in the case of orders of removals heretofore obtained by overseers, with such modifications as may be necessary to meet the circumstances of the chargeability to the union instead of the parish.

3. The guardians obtaining such order may defend the same, and the guardians upon whom it shall be made may appeal against the same, in like manner and with the like incidents and consequences as in the case of orders obtained or appealed against by overseers.

Provided that every appeal now pending may be continued and determined as though this act had not been passed.

4. Every notice, statement, demand, or other document required to be given by any such guardians in respect of any order of removal shall be deemed to be sufficiently authenticated if signed by their clerk in their name, and shall be deemed to be duly served upon the guardians to whom it shall be addressed if it be delivered to their clerk personally, or be left at his office, or be sent through the post addressed to him at such office.

5. For better enabling the guardians to obtain such orders of removal, or to appeal against the same, they may order the overseers of the poor, or any officer or other person having the custody of any books, papers, documents, or writings of or belonging to any parish in their union, to produce the same, upon reasonable notice to the board of guardians, or to their clerk or other person appointed by them, and shall allow copies or extracts to be taken therefrom for the use of such guardians, without fee or reward.

6. Where the guardians of any union or parish shall be satisfied that any pauper is settled within and removeable to their union or parish, and shall consent under their common seal to receive such pauper without an order of removal, the guardians seeking to remove such pauper may do so without any such order.

7. Any pauper removed under an order of removal, obtained by the guardians of any such union returning to and becoming chargeable to such last-mentioned union again, within the period of twelve months from such removal, without the consent of the guardians thereof, shall be deemed to be an idle and disorderly person within the meaning of the 5 Geo. 4, c. 83, and be liable to be convicted and punished as such.

8. From and after the 25th March, 1866, the period of one year shall be substituted for that of three years specified in the 1st section of the 24 & 25 Vict. c. 55.

9. The costs and expenses lawfully incurred in and about the prosecution of any person for which the guardians of the union may be liable, or which they undertake to pay, under the 59th section of the 7 & 8 Vict. c. 101, shall in all cases be charged to the common fund.

10. For the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse shall be considered as situated in the parish in the union where such poor person resided last, previously to his removal to the workhouse.

11. The Poor-law Board shall, as soon as convenient, make all such orders as may be requisite to render the provisions of this act applicable to the proceedings and accounts of the guardians of unions and of overseers of parishes comprised therein.

12. The guardians shall distribute the charges upon the common fund during and at the close of every half year in the proportions according to which the orders for the contributions to the common fund were made upon the several parishes comprised in such unions at the commencement of such half year, notwithstanding the change which may be made in the valuation list of any parish during such period.

13. Except as herein provided, no alteration shall be made in respect of the settlement of poor persons in parishes.

14. If in any union or incorporation for the relief of the poor, where the cost thereof is not borne by a common fund, or where the common fund is not calculated upon an equal basis throughout the union or incorporation, the body having under the constitution of such union or incorporation, the management of such relief shall be desirous of adopting the provisions of this act, such body may, on a resolution to that effect of a majority at two successive meetings, by writing under the hand of the presiding chairman of the second of such meetings, apply to the Poor-law Board to be included in this act; and upon the consent of that board being given under its seal to such application, and subject to such terms and conditions as that board may deem requisite, such union or incorporation shall be so included from such time as the said board shall declare; and such consent so signified shall be evidence that such application was in all respects duly made according to the provisions above mentioned.

15. When this act has been adopted by any such union or incorporation as aforesaid, and such adoption has been legally brought into operation in such union or incorporation, the body having the management of the relief of the poor therein shall from time to time make calls in advance for money for the relief of such poor upon the overseers of the several parishes therein respectively, on the basis of an equal pound rate on the annual value of the property in each parish rateable to the relief of the poor according to the law in force for the time being, and shall have the same powers of enforcing such calls as they now possess under the provisions of such local act for enforcing calls or rates for the relief of the poor; and such overseers shall have the same powers for making, levying, and enforcing rates to meet and pay such calls as they now possess, either under the provisions of such local act or the general law relating to the making, levying, and enforcing rates for the relief of the poor.

16. The words herein used shall be interpreted in the manner prescribed by the 4 & 5 Will. 4, c. 76, and the subsequent acts amending or explaining the same, and the provisions in such acts which apply to poor persons rendered chargeable upon the common fund by reason of their having become irremovable through the operation of the statutes in that behalf, shall apply to all the poor in the union hereby rendered chargeable upon the common fund.

17. This act may be cited as "The Union Chargeability Act, 1865."

#### CAP. LXXX.

An Act to explain and amend the Lunatic Asylum Act, 1853, and the Lunacy Act Amendment Act, 1862, with reference to Counties of Towns which have Courts of Quarter Sessions, but no Recorder. [29th June, 1865.]

*Sect. 1. Definition of word "county," in Lunatic Asylum Acts.*

*2. Powers of justices of such counties.*

*3. This and recited acts to be construed together.*

Whereas by the Lunatic Asylum Act, 1853, county is defined to include a county of a city or county of a town, and borough is defined to mean every borough, town, and city corporate having a quarter sessions, recorder, and a clerk of the peace: and whereas by the Lunacy Acts Amendment Act, 1862, it is provided that the word "county" shall not, except in the case of the city of London, mean a county of a city or county of a town: and whereas certain counties of cities and counties of towns have quarter sessions and clerks of the peace, but no recorders, wherefore the same do not come within the provisions of the Lunatic Asylum Act, 1853, and the acts construed as one therewith: and whereas it is expedient to remedy such defect: be it enacted &c., as follows:—

*Sect. 1.* That the word "county" in the Lunatic Asylum Act, 1853, and the several acts construed as one therewith, shall be construed to include every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder.

*2.* The justices of every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder, shall have all the powers and authorities conferred on or given to the justices of every borough not having any asylum by sect. 7 of the Lunatic Asylum Act, 1853, notwithstanding that such county of a city or town may have an

asylum of its own: provided always, that it shall not be obligatory on any such county of a city or town to keep up and maintain any such asylum from and after or during such time as it shall avail itself of the provisions of the said section.

*3.* This act shall be construed as one with the Lunatic Asylum Act, 1853, and several acts construed as one therewith, and may be cited for all purposes as "The Lunacy Act Amendment Act, 1865."

#### CAP. LXXXI.

An Act to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint James-the-Greater Chapel, Eastbury, in the Parish of Lamborne, in the County of Berks. [5th July, 1865.]

#### CAP. LXXXII.

An Act to amend the Endowment and Augmentation of Small Benefices (Ireland) Act, 1860. [5th July, 1865.]

#### CAP. LXXXIII.

An Act for further regulating the Use of Locomotives on Turnpike and other Roads for Agricultural and other Purposes. [5th July, 1865.]

*Sect. 1. Commencement of act.*

*2. Certain sections of the 24 & 25 Vict. c. 70, repealed.*

*3. Rules for the manner of working locomotives on turnpike roads and highways as herein stated. Penalty on non-compliance with rules.*

*4. Limit of speed of locomotives on turnpike roads and highways.*

*5. Size and weight of locomotives which may be used.*

*6. Restrictions as to the use of steam-engines within twenty-five yards of roads not to apply to locomotives used for ploughing purposes.*

*7. Name and residence of owner to be affixed to locomotives.*

*8. Power to local authorities to make orders as to hours, &c. locomotives may pass through cities, &c. Penalty on acting contrary to such orders.*

*9. In Ireland the county surveyor to be deemed the conservator of the roads in his county, and proceedings for damage to be taken in his name.*

*10. How penalties to be recovered and applied in Ireland.*

*11. Sect. 41 of the 25 & 26 Vict. c. 93, not to be affected.*

*12. Saving as to actions at law.*

*13. Short title.*

Whereas by the Locomotives Act, 1861, certain provision was made for regulating the use of locomotives on turnpike and other roads, and it is expedient that further and fuller provision should be made for that object: be it therefore enacted &c., as follows:—

*Sect. 1.* This act shall not come into operation till the 1st September, 1865, which day is hereinafter referred to as the commencement of the act, and shall cease and determine on the 1st September, 1867.

*2.* After the commencement of this act, and so long as the same shall continue in force, the 5th, 9th, 11th, and 15th sections of the said recited act, and all orders made in pursuance of the said 5th section, are hereby repealed.

*3.* Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations; viz.

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggon or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggon or carriages:

Secondly, one of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotives, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses, and carriages drawn by horses, passing the same:



Thirdly, the drivers of such locomotives shall give as much space as possible for the passing of other traffic:

Fourthly, the whistle of such locomotive shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road:

Fifthly, every such locomotive shall be instantly stopped, on the person preceding the same, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped:

Sixthly, any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise:

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding 10*l.*; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

4. Subject and without prejudice to the regulations herein-after authorised to be made by local authorities, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding 10*l.*

5. Subject to the provisions of this act, any locomotive which shall not exceed nine feet in width or fourteen tons in weight may be used on any turnpike road or public highway, provided that the wheels of such locomotive be constructed according to the requirements of the said recited act; and no locomotive exceeding nine feet in width or fourteen tons in weight shall be used on any such road, except subject to the provisions contained in the 3rd section of the said act as to the use of locomotives exceeding seven feet in width and twelve tons in weight.

6. Any provision in any act contained prohibiting, under penalty, the erection and use of any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, shall not extend to prohibit the use of any locomotive steam-engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

7. The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding 2*l.*

8. The following local authorities (that is to say),

- (1). In the city of London and liberties thereof, the court of the lord mayor and aldermen;
- (2). In the metropolis, as defined by the act of the session of the 18 & 19 Vict. c. 120 (except the city of London), the Metropolitan Board of Works;
- (3). In any borough in England the population of which shall have exceeded 5000 at the last census, the council of the borough;
- (4). In any borough or town in England the population of which shall have exceeded 5000 at the last census, not within the jurisdiction of a council, but within the jurisdiction of any trustees or improvement com-

missioners appointed under any public or private act of Parliament, the trustees or commissioners;

- (5). In any borough or town in Scotland the population of which shall have exceeded 10,000 at the last census, within the jurisdiction of a town council, the town council, and in any such town in Scotland not within the jurisdiction of a town council, but subject to the jurisdiction of police commissioners, or of trustees exercising under any public or private act of Parliament the functions of police commissioners, the police commissioners, or, where there are no police commissioners, then the trustees,—

may make orders as to the hours during which (and as to the speed, not in any case to exceed two miles an hour, at which) locomotives are to pass through the city or place subject to their respective jurisdictions; and any person in charge of a locomotive acting contrary to such regulations shall, on summary conviction, be liable to a penalty not exceeding 10*l.*:

Every order made in pursuance of this section shall be reduced into writing, and shall have affixed thereto the common seal of the local authority, where they have a common seal, and shall be signed by the members of the local authority, or any two of them, where they have not a common seal:

A copy of such order shall be affixed to some public place within the jurisdiction of the local authority, and advertised in some newspaper circulating within the jurisdiction of the local authority, and the production of a newspaper containing such advertisement shall be evidence of the copy having been advertised in pursuance of this act.

9. For the purposes of this act, the county surveyor of each county in Ireland shall be deemed to be the conservator of all the roads in the county of which he is surveyor, made or repaired by grand jury presentment; and it shall not be lawful to use any locomotive, other than those specially authorised by this act, on any such road in any county in Ireland, without the consent in writing of the county surveyor thereof, approved of by one or more justices sitting at petty sessions; and all compensation for damage done by any locomotive to any bridge, gullet, or arch, or any of the walls, buttresses, or supports thereof, on any such road in any county in Ireland, shall be recoverable in the name of the county surveyor thereof, for and on behalf of the county, from the party liable to pay the same; such compensation, if not exceeding 10*l.*, to be recovered in a summary way by summons at petty sessions, and if over 10*l.* to be recovered by process in the civil bill court.

10. Every penalty imposed by the provisions of this act shall, in Ireland, be recoverable before a justice or justices of the peace in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any act amending the same, and shall be applied according to the provisions of the Fines (Ireland) Act, 1851, and any act amending the same.

11. Nothing in this act contained shall repeal, alter, or in any way affect the provisions of the 41st section of the Thames Embankment Act, 1862.

12. Nothing in this act contained shall authorise any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive.

13. This act may be cited as "The Locomotives Act, 1865," and "The Locomotives Act, 1861," and this act, shall be construed together as one act.

CAP. LXXXIV.

An Act to amend the Prisons (Scotland) Administration Act, 1860, and to explain the 52nd and 77th Sections of the said Act. [5th July, 1865.]

CAP. LXXXV.

An Act to amend the Laws relating to Procurators in Scotland. [5th July, 1865.]



## CAP. LXXXVI.

An Act to amend the Law of Partnership.

[5th July, 1865.]

- Sect. 1. The advance of money on contract to receive a share of profits not to constitute the lender a partner.*
- 2. The remuneration of agents, &c., by share of profits not to make them partners.*
- 3. Certain annuitants not to be deemed partners.*
- 4. Receipt of profits in consideration of sale of goodwill not to make the seller a partner.*
- 5. In case of bankruptcy, &c., lender not to rank with other creditors.*
- 6. Interpretation of "person."*

Whereas it is expedient to amend the law relating to partnership: be it therefore enacted &c., as follows:—

*Sect. 1.* The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

*2.* No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

*3.* No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of or to be subject to any liabilities incurred by such trader.

*4.* No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business.

*5.* In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than 20s. in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

*6.* In the construction of this act the word "person" shall include a partnership firm, a joint-stock company, and a corporation.

## CAP. LXXXVII.

An Act to enable Her Majesty's Postmaster-General to acquire a Site for the Extension of the General Post-office in St. Martin's-le-Grand, in the City of London.

[5th July, 1865.]

## CAP. LXXXVIII.

An Act for the recording of Titles to Land in Ireland.

[5th July, 1865.]

- Sect. 1. Short title and extent of act.*
- 2. Construction of terms.*
- 3. Record of title to be established under control of the Landed Estates Court.*
- 4. Any conveyance from the court may be recorded under this act.*
- 5. Extension of the powers of the court as to granting declarations of title.*
- 6. Every declaration of title may be recorded, and need not be registered in the deeds registry.*
- 7. Any person obtaining a conveyance or declaration may decline to have his title recorded under this act.*

- 8. Conveyances and declarations when recorded to be entered, each to form, with subsequent entries, a folio.*
- 9. Duplicates of conveyances or declarations may be issued.*
- 10. Books of record not to be inspected without leave. Index to be made.*
- 11. Questions arising on the record to be disposed of by a judge, who may decide or deal with the same as may seem right.*
- 12. Recorded owners to be entitled to the estates mentioned on the record free from all other claims.*
- 13. Informality not to prejudice entry in record of title.*
- 14. Every charge, &c. to be entered in record of title.*
- 15. Estates of proprietors subject to existing law.*
- 16. Acts relating to registry of deeds not to apply to recorded land.*
- 17. Power to amend the record on fiat of a judge, and the like amendment to be made in land certificate. Power to order a certificate to be brought in to be amended or a new one substituted.*
- 18. Officer to deliver land certificates. Certificates of charge to be also issued.*
- 19. Officer to compare certificate with the record.*
- 20. Recorded owner desirous of selling, &c. may obtain special land certificate.*
- 21. Certificate to be evidence, and may be deposited as security.*
- 22. Power of subdividing land or charge, and of obtaining new certificates.*
- 23. Procedure on transfer of part of an estate.*
- 24. Apportionments may be made and surveys directed for the purposes of subdivision.*
- 25. On proof of loss, &c. of certificate, a new one may be given.*
- 26. Modes by which recorded estates and charges may be dealt with.*
- 27. Attendance of parties at the office to transfer or deal with recorded land, &c.*
- 28. Transfer, &c. may be by the statutory forms, which shall be effectual.*
- 29. Other deeds may be recorded, on evidence of due execution. Originals or copies to be retained in court.*
- 30. When deed signed, &c., the interest thereunder to be deemed recorded, and an official note to be made.*
- 31. Vesting orders may be made, as under the Trustee Acts.*
- 32. Power to recorded owner of closing the record, and remitting his estate to the operation of the old law relating to the registry of deeds, &c. in Ireland.*
- 33. Jurisdiction of court declared in cases of actual fraud.*
- 34. Devises of deceased recorded owner may apply to be recorded as owner. Notice to be given to heir, &c.*
- 35. Heir-at-law of deceased owner may apply to be recorded. Court may appoint a representative of estate of a deceased owner. Powers of the representative.*
- 36. Personal representative may be recorded.*
- 37. Assignees may be recorded instead of owner. As to marriage of female owner.*
- 38. The judge may direct estates and interests under settlements to be separately recorded.*
- 39. Interests, &c. separately recorded to be recorded estates or charges.*
- 40. Interests, &c. may be recorded by reference. No appeal to lie if the judge declines to record separately.*
- 41. Trustees with power of sale may be recorded as owners, and a person may be recorded as "consenting party" to any sale, &c.*
- 42. No judgment, Crown bonds, lis pendens, &c. to affect recorded land, unless duly entered on the record. Judgments need not be registered by affidavit.*
- 43. Judgments, recognisances, &c. to be re-entered before five years. If not so re-entered they shall not affect purchasers for valuable consideration.*
- 44. Part payment of charge to be noted. Interest from the last gale day only shall be deemed to be due on the occasion of a transfer. No release necessary where the payment of a charge is noted.*

45. *Sale by sheriff of any recorded land or leases to be noted.*
46. *Power to any person interested to lodge a caveat prohibiting dealing with land, &c.*
47. *Caveat to cease unless extended. Power to a judge to extend the operation of a caveat.*
48. *In certain cases a note to be made on certificate as to disposition of land.*
49. *Mode of leasing or demising recorded land. Consent of any person entitled to a charge to be obtained, otherwise the rights of such person to be expressly reserved. Certain leases excepted from operation of the act.*
50. *Title of lessor in lease not to be indefeasible unless the court shall direct a note to be entered to that effect.*
51. *Power in certain cases to record land, although an interval has elapsed since such land was the subject of a conveyance or declaration by the court.*
52. *Officer not to be restrained by injunction, &c.*
53. *Indemnity for acts done bona fide.*
54. *Days and hours when the office shall be opened for business.*
55. *General rules to be made and approved of, and submitted to Parliament.*
56. *Seal of Record of Title Office.*
57. *Person making false statement, guilty of misdemeanour.*
58. *No proceeding, &c. declared a misdemeanour to affect remedies of persons aggrieved.*
59. *Answers to questions, &c. not admissible in evidence.*
60. *Provisions as to applications made by married women.*
61. *Provisions for other persons under disability.*
62. *Record to be under management of certain officers of the court. Arrangements to be made for constant attendance, &c. Power to appoint additional clerks to assist in the office, if necessary.*
63. *Practice before the judge, and right of appeal.*
64. *Address of recorded owners, &c. to be given for the purpose of serving notices.*
65. *A scale of costs may be framed for professional services in regard to recorded land.*
66. *Forms in schedule to be used, but may be varied if necessary.*
67. *Return of business done to be sent in annually by the judges.*
68. *Judges to frame a schedule of fees.*
69. *Rules with regard to the collection of fees.*
70. *Stamp Acts in force to apply to stamps provided under this act.*

Whereas it is expedient that titles conferred by the Landed Estates Court, Ireland, should be kept free from complication, so that subsequent dealings with the estates held under such titles may be more simple and economical: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Record of Title Act (Ireland), 1865;" it shall apply to Ireland only, and shall come into operation on the 2nd November, 1865.

2. In the construction of this act (except where the context or other provisions of this act require a different construction)—

The word "judge" shall mean one of the judges of the Landed Estates Court, Ireland:

The word "court" shall mean the Landed Estates Court, Ireland:

The word "officer" shall mean the officer for the time being of the Landed Estates Court, Ireland, whose duty it shall be to carry out this act, under the direction of the said court:

The word "record" shall mean the book or books to be provided and kept for the recording of titles, pursuant to this act, in the Landed Estates Court:

The word "land" shall extend to manors, messuages, advowsons, rectories, tithes, lands, tenements, and hereditaments, and to rents or annuities charged upon hereditaments, whether subject to any fee-farm or other perpetual rent, with or without condition of re-entry for securing the same, or otherwise, and whether corporeal or incorporeal, and to any undivided share thereof:

The word "lease" shall include an agreement for a lease, and the estate or interest created or agreed to be created by a lease or agreement in the whole or any part of the land therein comprised, and shall include any term of years:

The word "owner," as applied to land, shall include any person entitled in possession in fee-simple, or in tail, or quasi in tail, and any person who has a power of appointing or disposing of the fee, or appointing or granting in fee farm, and whether with or without the consent of another person, and any person entitled as a trustee for sale, or having a power of sale or of granting in fee farm, and whether with or without consent as aforesaid, and as applied to a lease shall include any person entitled in possession to the interest thereunder, or having power to appoint or dispose thereof, and to any person entitled thereto as a trustee for sale or having a power of sale:

The words "person" or "owner" shall extend to a body politic or corporate:

The word "charge" or "incumbrance" shall include any legacy, portion, lien, or other charge whereby a sum of money is secured to be paid, and also any annual or periodical charge, and also any charge hereafter to be imposed on land under any public act promoting drainage or land improvement, and also every other charge upon land which is deemed an incumbrance in a court of equity:

The word "certificate" or "land certificate" shall include the counterpart of a conveyance, or the duplicate of a judicial declaration of title recorded pursuant to this act: —

The word "settlement" shall include any instrument under which any land or lease shall be at law or in equity so limited as to create partial or limited estates or interests:

The expression "recorded estate" shall mean any land or lease the title to which shall be recorded under the provisions of this act.

*Record of Title to be established of Land which has been the Subject of Conveyance or Declaration by the Landed Estates Court.*

3. There shall be established a record of title, to be kept under the control and direction of the Landed Estates Court; and the office in which such record is kept shall be called "The Record of Title Office" of the said court.

4. Any person, upon obtaining a conveyance from the court of any land or lease, or of any interest therein, shall be entitled to have such conveyance entered in the record, and on the same being so entered the land or lease, or interest therein, comprised in such conveyance, shall be, and be deemed to be, for the purposes of this act, a "recorded estate."

5. And whereas the court has power to grant a judicial declaration of title to a fee-simple estate, and it is desirable to extend such power: be it therefore enacted that, notwithstanding anything contained in an act of the 21 & 22 Vict. [c. 72], intituled "An Act to facilitate the Sale and Transfer of Land in Ireland," the court may, on the application of the owner of any land or lease of any tenure in Ireland, proceed to investigate his title to the estate or interest or power in respect of which he claims to be such owner, and grant such declaration, in the manner directed by the said act.

6. Any person, upon obtaining a declaration of title from the court, shall be entitled to have such declaration entered upon the record, and thereupon the land or lease comprised shall be, and be deemed to be, a recorded estate; and no declaration of title so entered upon the record shall be registered in the office for registering deeds in Ireland; and it shall not be necessary to keep in the court any other record or copy of any such declaration of title than that hereinafter mentioned, anything in the said recited act, or in any rule or order made pursuant thereto, notwithstanding.

7. Any person to whom any conveyance or declaration of title shall be given by the court may, by requisition under his hand, lodged in the proper office of the court within seven days after the execution of such conveyance or declaration by a judge, require that the title so conferred shall not be recorded under this act; and on such requisition the court shall deliver out such conveyance or declaration, and the

same shall not be recorded: the provisions of the said act of the 21 & 22 Vict., as to the registration of declarations of title in the office for registering deeds, shall in that case take effect as though this act had not been passed: provided always, that any declaration of title made after the passing of this act, and not recorded pursuant to this act, may be registered in the said office for registering deeds at any time within fourteen days after the execution thereof by the judge.

8. All conveyances and declarations which are retained for the purpose of being recorded under this act shall be entered in the book or books forming the record, and bound up therein, leaving space for further entries; and each of such conveyances and declarations, together with the further entries (if any) thereunder, shall form a division (hereinafter called a folio) of the record, distinguished by a separate number, or in such other manner as the officer may determine.

9. A counterpart of every conveyance and a duplicate of every declaration of title, recorded as aforesaid, signed by a judge, and under the seal of the court, may be issued to the person entitled thereto; and every such counterpart or duplicate so issued shall be marked by the officer with a memorandum of the recording as aforesaid; and every such counterpart or duplicate so marked shall as of the date thereof be and be deemed to be for all purposes as effectual as a "land certificate" granted as hereinafter mentioned, and shall for the purposes of this act be regarded as a land certificate.

10. The record shall be kept in the office, and shall not be removed therefrom for any purpose, unless the court shall direct. The record may be inspected by the recorded owners of the estates and interests, or of the mortgages and incumbrances recorded therein respectively, or by their solicitors or agents. No other person shall be permitted to inspect or to take copies of or extracts from the record, unless authorised by any such owner or by fiat of a judge. An index to recorded estates shall be made and regularly entered up; and such index may be inspected by any person without payment of any fee.

11. If in making up or continuing such record of title as aforesaid any question shall arise as to the true construction or legal validity or effect of any deed, will, or instrument, or as to the persons entitled, or the extent or nature of the estate, right, or interest, power or authority, of any person or class of persons, or the priority of any charge or incumbrance, claim or interest, or as to the mode in which any entry ought to be made in the record of title, such questions shall be disposed of by the judge, who may either decide the same, or direct any proceeding at law or in equity for that purpose, or, at his discretion, and without deciding such question, may direct such entry to be made on the record as shall appear to be right; and the judge may direct the estate or interest of any person to be recorded by reference to the deed, will, or instrument creating the same, or copy thereof made and retained in court, as hereinafter directed.

12. Subject to any qualification mentioned in such record of title, and to any recorded charges, incumbrances, tenancies, or leases, and to any tenancy or lease not required to be noted on the record, the recorded owner for the time being shall be and be deemed to be absolutely and indefeasibly possessed of, and entitled to, such recorded estate against all persons, and free from all rights, interests, claims, and demands whatsoever, including any estate, claim, or interest of her Majesty, her heirs and successors: provided always, that nothing herein contained shall prejudice or affect any rent-charge in lieu of tithe, or any Crown rent or quit-rent to the Crown, or any charge imposed before the day of the passing of this act under any public act or acts for promoting drainage or land improvement in Ireland.

13. No entry in such record of title as aforesaid shall be set aside or called in question as against any person who may afterwards become interested under any sale, mortgage, or contract for valuable consideration by reason of any irregularity or informality therein, or in the proceedings previous to the making thereof.

14. From and after the recording of any land or lease, every settlement, transfer, mortgage, charge, lease, or sub-lease granted or in any manner created in or affecting such land or lease, or any part thereof (except as herein excepted), shall be entered or noted in the record of title to be kept as aforesaid. Recorded charges on the same land or lease shall, as between themselves, rank according to the date of their

being recorded, and not according to the date of their creation.

15. Subject to the enactments herein contained, the estates and interests of all recorded owners shall remain subject to the existing law, and may be dealt with, assured, devised, and transmitted by descent or representation, according to the ordinary rules of law and equity.

16. The provisions of the several acts of Parliament now in force relating to the registry of deeds in Ireland shall cease to be applicable to any land so soon as it has been placed on the record, under the provisions of this act, and so long as it remains thereon; and the said several acts shall not be applicable to any lease, charge, or incumbrance on the record, so far as the same affects any recorded estate: provided always, that so soon as any conveyance or declaration of title has been recorded under this act, a memorial of the placing of the land or lease on the record shall be prepared, specifying the recorded ownership and full description of the lands, which memorial shall be certified under the seal of the court, and shall be forthwith handed to the registrar of the registry of deeds in Ireland; and such registrar is hereby authorised and directed to file such memorial, when duly verified, in the same way as memorials of deeds, and shall receive such fees thereon as now chargeable for memorials of deeds, and the said registrar shall duly enter in the registry the name of the said owner, and the description of the lands, and shall make the usual return on any requisition as with regard to memorials of deeds. Such memorial, when registered, shall be conclusive evidence of the several matters therein contained.

17. The officer shall, when directed by a fiat of a judge, but not further or otherwise, make any amendment, or correct any error in the record, or in any map thereto annexed, as the judge shall consider just: such amendment or correction shall be made after such notice, and on such terms as to costs or otherwise, as the judge may think fit. Every such amendment or correction in the record shall be marked by the officer with the date of making the same, and with the initials of his name; and any certificate which may have been issued as hereinafter mentioned, or other instrument of title, shall be amended in like manner; and the judge may direct and compel any such certificate or instrument of title to be brought to the office by any person for the purpose of amendment, or for the purpose of having a new certificate granted in lieu thereof; and such amendment of the old, or substitution of a new, certificate shall be without prejudice to any claim of lien or other claim thereon, and shall be on such terms as to costs as may be just.

#### *As to Land Certificates and Certificates of Charges.*

18. The officer shall, upon request, deliver to every person who is named or described in the record as the owner of any recorded estate a certificate, herein called a "land certificate," under the seal of the office, which certificate shall contain a copy of the description of the estate and particulars of the incumbrances, leases and other matters in force relating thereto, and a copy of the map (if any); the officer shall also upon request, deliver to every person who is named or described in the record as the owner of any charge or incumbrance a certificate of charge: provided always, that no certificate shall be issued until any duplicate conveyance or declaration or former certificate (as the case may be) which may have been issued shall be returned to the officer to be cancelled.

19. At the request of the holder the officer shall at any time compare any such certificate with the record, and, if there has been no alteration, shall certify at the foot of such certificate that it contains a true statement of the entries in the record, and shall sign the same and add the date of such signature. Any alteration or omission which can be conveniently made in a certificate, or any addition thereto, so as to make the same correspond with any alteration in the record, may be made and signed by the officer, if he shall think fit. Before recording any transfer or other dealing (except a lease), the officer shall serve a notice thereof on the recorded owner in the manner directed by sect. 64 of this act, unless such owner shall appear in person, and be identified to the satisfaction of the officer; and the officer shall also require the production of the certificate or other instrument of title equivalent thereto, that may have been issued; and when such transfer or disposition has been completed such

certificate or instrument of title (if reissued) shall be made up so as to correspond with the record. A new certificate may be granted on the delivery up of the former certificate.

20. Whenever any recorded owner shall be desirous of selling or mortgaging any recorded estate he may, on giving up to the officer his land certificate, obtain a "special land certificate" for that purpose, which shall contain the particulars given in the land certificate. Such special certificate shall be conclusive evidence of the title of the recorded owner as appearing by the record. No entry shall be made by the officer in the record of any deed, instrument, act, or transaction affecting the estate comprised in such special certificate, except on the delivery up of such special certificate, until fourteen days have expired from and after the day of the date thereof. A note of such special certificate shall be entered in the record.

21. Every land certificate, or certificate of charge, duly signed and sealed, shall be conclusive evidence of the several matters therein contained as of the date of such certificate. The deposit of the certificate by the person entitled thereto shall for the purpose of creating a lien on his estate and interest, be a valid security in the terms of any letter or memorandum or agreement accompanying such deposit; and such letter or memorandum or agreement shall be chargeable with the same stamp duty as a mortgage would have been according to the Stamp Acts now in force.

22. Any owner of a recorded estate or charge, on making application to the officer, and upon giving up his certificate to be cancelled, and on producing the consent of any incumbrancer or other person whose consent shall be deemed necessary, may obtain separate certificates for separate parcels of land, or for separate portions of any charge, or may obtain one certificate comprising several parcels of land or charges; and in such case the old folio of the record may be cancelled, and new folios or chapters relating to such subdivisions may be opened therein.

23. On the transfer of part of a recorded estate a new folio shall be opened in respect of such part, and a new land certificate issued; and a suitable entry shall at the same time be made on the folio and map relating to the residue and on the certificate thereof; or, if the officer shall deem it more convenient, he may cancel the old folio, and open a new one, and issue a new certificate in respect of the residue of the estate.

24. If for any purpose mentioned in the last section any apportionment of head rent or of tenant's rent shall be desirable, the court may apportion such rent, whether the same be reserved by a fee-farm grant, or by a lease according to its usual practice with regard to apportionments, and on the like notices or consents being produced: provided always, that the officer may, if he deem it necessary, require the boundary survey to be made and new maps furnished before proceeding to open new folios in the record as to separate parcels contained.

25. If any land certificate or certificate of charge be lost or destroyed, the officer may, upon the fiat of the judge who shall be satisfied of the fact of such loss or destruction, and shall direct such public advertisement for the recovery of the same as he may consider expedient, give a new certificate, and shall state thereon that it is given in substitution for the former certificate, and the same fees shall be chargeable for the new as for the former certificate; but no such new certificate shall be any avail against any person who may have already derived title under the former certificate.

#### *Transfer and Transmission of recorded Estates and Charges.*

26. Recorded estates and recorded charges may be conveyed, charged, settled, dealt with, or affected—

By a statutory deed or disposition in either of the forms in the schedule annexed to this act;

By indorsement on the certificate;

By deposit of the certificate as aforesaid;

By deed, will, decree, order, or other means by which such land or charge, if not recorded, might now, according to law, be dealt with or affected;

but no estate, interest, contract, or dealing not noted on the record shall prevail against the title of any owner, or of the proprietor of any estate, interest, charge, or incumbrance duly recorded under this act; and no equitable mortgage or lien on recorded land shall be created by deposit of title deeds.

27. On the occasion of any transfer, mortgage, or other disposition of a recorded estate, or of any charge or incum-

brance thereon, the parties or their attorneys lawfully authorised may attend at the office to complete the transaction. The description of the land and of the estate or charge proposed to be transferred or dealt with shall be taken from or refer to the record, and shall be inserted, under the superintendence of the officer, in one of the statutory forms set out in the schedule hereto; and such transfer or disposition shall be executed by the owner or transferor, or by his attorney lawfully authorised, and duly attested by a solicitor, and shall then and there, together with the power of attorney (if any), be delivered to the officer for the purpose of having an official note entered in the record.

28. The recorded owner of any estate, charge, or incumbrance may transfer or charge the same by one of the forms in the schedule hereto, and the same shall be as complete and effectual as any other form of transfer, charge, or mortgage would have been either at law or in equity. Persons taking under either of the said statutory forms shall take as fully and effectually as if the estates and rights expressed to be created and given by such forms respectively had been created or granted by any of the modes of assurance now known to the law.

29. Any person claiming under a deed or instrument affecting recorded land executed elsewhere than in the office may apply to have the same recorded as to such land, on giving sufficient evidence of the due execution thereof; and when the officer has received such deed or instrument he shall forthwith note the same on the record, and shall retain in court either the original or a counterpart, or a copy, made and compared in such manner as the court may by general rule direct, and under the hand of the grantor; and the original, if handed back to the person entitled thereto, shall be so marked or indorsed by the officer as to show that it has been noted on the record; and so far as relates to the recorded estate or charge thereby affected it shall not be necessary to register any memorial of such deed or instrument in the office for registering deeds in Ireland: provided always, that the officer may decline to receive and note any deed or instrument which is not made in one of the forms in the schedule hereto, unless a judge has, by fiat indorsed thereon, directed the same to be received and noted.

30. So soon as any deed or instrument has been duly executed, and has been received by the officer, such deed or instrument, and the estate and right created thereby, shall be deemed to have been duly entered on the record, and an official note of reference thereto shall forthwith be made by the officer in the proper folio of the record: provided always, that such deed or instrument, and the estate and right created thereby, shall not be deemed to have been entered on the record so as to affect any land, lease, or charge comprised in any such "special land certificate" as hereinbefore mentioned until after the expiration of the time hereinbefore limited for the entry of any deed, act, or transaction affecting such land or charge.

31. For the purpose of authorising or of compelling a transfer to be made of any recorded estate or charge or any part thereof, the court or a judge may make such orders and give such directions as to the appointment, removal, or change of trustees, or as to the vesting in them or in any other person of any land or charge, as the Lord High Chancellor is empowered to make or give under the Trustees Act, 1850, or any act amending or extending the same.

32. The owner of any recorded estate may at any time by a requisition under his hand, and with the consent of all persons who may appear to be interested as having charges or otherwise, and whose consent shall be deemed necessary, require the record to be closed, and on such requisition and consent being examined and found to be sufficient, a memorial of the closing of the record shall be prepared, specifying the ownership and full description of the lands, which memorial shall be signed by the officer and by the said owner, and shall be forthwith handed to the registrar of the registry of deeds in Ireland; and such registrar is hereby authorised and directed to file such memorial, when duly verified, in the same way as memorials of deeds, and shall receive such fees thereon as now chargeable for memorials of deeds, and the said registrar shall duly enter in the registry the name of the said owner and the description of the lands, and shall make the usual return on any requisition as with regard to memorials of deeds. Such memorial, when registered, shall be conclusive evidence of the several matters therein contained.

After the registration of such memorial, the record shall be deemed to be closed as to such estate, but shall for all purposes be deemed to have conferred an indefeasible title upon the person last therein described as owner (subject as therein, and as in this act, is excepted).

33. Notwithstanding anything contained in this act, the Landed Estates Court shall have the same jurisdiction that courts of equity now have on the ground of actual fraud, and it may alter or amend the record on such terms as may be just.

34. On the death of the recorded owner of any real estate any person claiming as devisee may apply to the judge for a fiat directing the officer to record the applicant as owner, in the place of the deceased person; but the judge shall withhold such fiat until the applicant shall have lodged in the office the probate, or a true copy of the will or codicil under which he claims; and no transfer or disposition by any such devisee shall be recorded, except after the service of such notice on the heir-at-law and executors (if any) as the judge may deem necessary; and the judge may also, if he shall see fit, suspend such fiat until a decision of some other competent court in favour of the title claimed by such devisee shall have been obtained.

35. On the death of the recorded owner of real estate, any person claiming as heir-at-law may apply to the judge for a fiat directing the officer to record the applicant; but no such person shall be recorded as owner until at least six calendar months from the date of such application shall have expired, and such notices of every such application shall be given, by advertisement and otherwise, as the judge may think necessary or proper: if there shall be any doubt, dispute, or litigation touching the ownership of the estate of a deceased owner, the court may appoint a person to be recorded in his place as the representative of such estate, and shall give directions to such representative from time to time touching the management and letting of the estate; and all acts of such representative in pursuance of the directions of the court shall be valid and binding on all parties interested in the estate.

36. On the death of the recorded owner of a chattel interest in or of a charge affecting land, his personal representative may apply to be recorded in the place of the deceased person.

37. On the bankruptcy or insolvency of any recorded owner, the assignee or assignees of his estate shall be entitled to be recorded in his place. On the marriage of any female owner of a recorded estate or charge, her husband may apply to be recorded as co-proprietor in right of his wife.

#### *Power to record Estates and Interests under Settlements.*

38. Upon the application of any person claiming under any settlement of a recorded estate, a judge may make an order directing the officer to record separately any vested estates under the settlement, either in possession, or in remainder after the dropping of a life or lives, which can be aliened by the owner thereof, without the consent of any other person, and which is not liable to be defeated or affected at law or in equity by the act of any other person, or by any other contingency. Upon any such application the judge shall ascertain whether any power of sale or exchange or power of charging exists with respect to such estate, and if so, the record shall be qualified by stating the existence of such power; the judge may also direct the officer to record separately any vested and ascertained charge or incumbrance under the settlement.

39. Any estate, interest, or charge under a settlement, when separately recorded, shall be, for the purposes of this act, and shall be deemed to be, a "recorded estate," or a "recorded charge," and a separate folio or division (as the case may be) of the record shall be opened therefor, and a separate certificate issued to the person entitled.

40. On any application to record separately any estate, interest, or charge under a settlement, the judge may decline to have the same separately recorded, or he may (at his option) direct that the same be recorded by means of a note of reference to the whole or any portion of the settlement or counterpart, or the copy retained in court, as hereinbefore provided for; and no appeal shall lie from any decision of the judge given under this section.

41. Trustees with a power of sale may be recorded as joint owners, and any tenant for life or other person may, by their

consent, or by direction of a judge, be entered as a "consenting party," and without the consent of the person so inscribed as last aforesaid no transfer or disposition shall be made: provided always, that the judge shall have full power (after such inquiries and notices as it shall deem just) to direct the name of any person to be removed as a "consenting party," and to direct the name of any other person to be inserted in lieu thereof; and any person interested in preventing any sale or disposition by such joint owners may lodge a caveat with the officer in manner hereinafter mentioned.

#### *Judgments and other Claims on recorded Estates.*

42. No judgment, recognisance, crown bond, lis pendens, acceptance of office, inquisition, decree, or order shall be a charge upon recorded land, or in any manner affect the same, unless and until a memorandum of the same, in such form and with such verification or other evidence as the court may by general rule direct, shall be lodged with the officer; and the officer shall, on such memorandum being lodged, and such information given as will enable him to identify the land sought to be charged, make an official note thereof on the record. It shall not be necessary to register or file any affidavit in the Registry of Deeds Office for the purpose of making a judgment a charge on recorded land.

43. Judgments, recognisances, crown bonds, lis pendens, acceptances, and inquisitions, decrees, and orders entered on the record by the lodgment of a verified memorandum, and the entry of an official note as aforesaid, shall be re-entered before the end of every five years from the entry thereof by the like means; and no judgment, recognisance, crown bond, lis, acceptance, inquisition, decree, or order shall be of any force or effect as against a purchaser for valuable consideration, or mortgagee of a recorded estate, unless the same shall have been entered or re-entered on the record within five years previous to the date of the recording of his purchase or mortgage; and no such purchaser or mortgagee shall be affected by notice, express or implied, of any judgment, recognisance, crown bond, lis, acceptance, inquisition, decree, or order.

44. Whenever payment is made of any part of the principal money due on a recorded charge or incumbrance, the officer may, on production of a receipt signed by the recorded owner of the charge and duly verified, make an official note thereof, on the record. Unless and until such note be made the entire principal sum expressed to be due shall, on the occasion of any transfer for valuable consideration, be considered as due. Interest on the principal sum since the last gale day shall be considered as due, unless the fact of the payment of such interest be recorded. If in any instrument of transfer any further interest be expressed to be due, such transfer of arrears of interest shall be valid only to the extent to which such interest shall be actually due and recoverable from the land. On the application of any recorded owner or incumbrancer, and on finding that any charge, incumbrance, or claim upon a recorded estate has been paid off or satisfied, the officer may make an entry of the fact on the record, and no release or reconveyance shall in that case be necessary.

45. Whenever any recorded land or lease shall be sold by the sheriff under any writ, or shall be sold under any direction, decree, or order of any competent court, the officer, on production to him of the conveyance or assignment, and of an office copy of the writ, direction, decree, or order, may record the purchaser as owner of such land or lease.

#### *Caveats against Transfer, &c.*

46. Any person interested in any land, lease, or charge recorded in the name of any other person may lodge a caveat with the officer, which caveat shall be in such form and shall be verified and noted on the record in such manner as the court shall by general rule direct. A caveat shall remain in force for a period of twenty-one days from the date thereof if the court shall be then sitting, or if the court shall not be sitting then for twenty-one days from the next sitting of the court. Any transfer or other disposition recorded during such period shall, unless a judge shall otherwise direct, be made expressly subject to the title and claim (if any) of the cautioner.

47. After the expiration of such period the caveat shall cease, and the officer shall cancel any note thereof on the record, unless a fiat continuing it be made by a judge; and upon the caveat so ceasing the land, lease, or charge shall be

dealt with in the same manner as if no caveat had been lodged. If before the expiration of the said period the cautioner or his solicitor appears before a judge, and gives such undertaking or security, or lodges such sum in court as such judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, then and in such case such judge may direct the officer to delay recording any dealing with the land, lease, or charge for a further period, to be specified in such order, or make such other order as may be just. If any caveat be lodged without reasonable cause, such judge may order payment by the cautioner of such sum by way of compensation or costs as he may deem just.

48. Where two or more persons are recorded as owners of any estate or charge, a note may, with their consent or by direction of the judge, be made by the officer on the record to the effect that when the number of such owners is reduced below a specified number, no disposition of such land or charge shall be made by the survivors unless the judge shall otherwise direct; and such note shall appear on every copy or certificate issued by the officer.

#### *Leases and Demises of recorded Land.*

49. Whenever recorded land is intended to be leased or demise, the lease and a counterpart thereof, after being executed by the recorded owner, and attested, may be brought to the officer, who shall make an official note of the terms of such lease in the proper folio of the record, and shall mark or indorse on such lease and counterpart a note that they have been recorded. A lease granted by any person having power to lease, but not being the recorded owner, may, on the fiat of the judge, be noted on the record in like manner. On the application of the lessee, and after notice to the recorded owner, any such lease may be entered in a subdivision or chapter of the said folio, and such lease shall in that case be deemed to be a "recorded estate" within the meaning of this act: provided always, that if the lessor's interest shall be subject to any recorded charge, either the consent of the person appearing entitled to such charge shall be obtained before a lease or demise of recorded land shall be noted or entered on the record, or, if such consent be not obtained, the officer shall enter a note to the effect that the granting or recording of such lease is "without prejudice to the title and claim" of the person entitled to such charge; and the interest of the lessee shall remain subject to such qualification as last aforesaid, but the officer may at any time, on such consent being obtained, and proved to his satisfaction, cancel such qualification, and thereupon the title of the lessee shall become indefeasible, subject only to the reservations, clauses, and covenants contained in the lease: provided also, that any tenancy or lease lawfully made at a rackrent without fine for a term not exceeding thirty-one years, and under which the tenant is in possession, or any assignment thereof, shall be valid for all purposes, although not entered or recorded under this act.

50. On the recording, pursuant to this act, of any land held under lease, the indefeasible title shall not extend to the title of any lessor or grantor under whom the same is held, unless the court, having investigated the title of such lessor or grantor, shall direct an official note to be entered to the effect that the title of such lessor or grantor is guaranteed, and in such case the validity of such lease shall not afterwards be impeached on the ground of any want of power or title in the said lessor or grantor to make the same, or by reason of any clause, condition, or covenant in the same, or by reason of the same not having been duly registered.

#### *Land heretofore conveyed, &c. may be brought upon the Record.*

51. Any person who has heretofore obtained a conveyance from the Court of the Commissioners for the Sale of Incumbered Estates in Ireland, or has obtained or may hereafter obtain a conveyance or declaration of title from the Landed Estates Court, or the assign or representative of any such person, may apply in a summary manner, without petition, to the court, to be recorded as owner, pursuant to this act; and on producing such conveyance or an office copy of such declaration, and on furnishing such search or other evidence of title, and after the publication of such advertisement as the court may direct, such person may, if the court think fit, be recorded as owner of the whole or part of the land or lease

comprised in such conveyance or declaration, and such land or lease, or part thereof, shall thereupon become a recorded estate within the meaning of this act: provided always, that an interval of two calendar months shall elapse between such first application and the final recording of the title as aforesaid; and that the officer may, if he think fit, require a new survey of the land to be made, and a new map, for the purpose of entry on the record.

#### *General Provisions, Practice of the Office, Rules, Forms, Fees, &c.*

52. No act, entry, or proceeding under this act shall be restrained, nor shall the officer be restrained by order or injunction of a court of equity or by writ of prohibition; nor shall the officer be required by writ of mandamus to do any act, or make any official note or entry under this act; nor shall the record or any book or document be liable to be removed from the office under any writ or process of any other court, unless a judge shall so direct.

53. The judge shall not, nor shall the officer, or any person acting under the authority of either of them, be liable to any action, suit, or proceeding for or in respect of any act or matter *bonâ fide* done or omitted in the exercise or supposed exercise of the powers of this act.

54. The "record of title office" of the court shall be open for business on every day of the year, except the following days, viz. Sundays, Christmas Day, New Year's Day, Good Friday, Easter Monday, and Whit Monday, and any day duly appointed to be kept as a day of general fast or thanksgiving. The said office shall be open during such hours, and such officer and clerks shall attend therein, as the court shall from time to time direct.

55. The court shall, on or before the 1st January next, frame a code of general rules and of forms for carrying out the objects of this act. Such general rules shall further provide for the sale, transfer, partition, and exchange of "recorded estates" by the court. Such rules and forms shall be submitted to the Lord Chancellor of Ireland, and approved of by him, before they shall be binding, and when made and approved of as aforesaid they shall be laid before Parliament forthwith, if Parliament is sitting, or if not, within fourteen days after the next sitting of Parliament; and such rules and forms may from time to time be added to, rescinded, or altered by the like authorities respectively; and all such rules shall take effect as general rules of the court.

56. A seal shall be prepared for the record of title office of the court, and shall be kept in the custody of the officer, and all certificates and other documents purporting to be sealed with such seal shall be admissible as evidence, without further proof.

57. If in any proceeding to obtain the recording of any land, or to obtain any certificate, or otherwise in any transaction relating to land which is or is proposed to be put upon the record, any person acting either as principal or agent, shall knowingly, and with intent to deceive, make or assist or join in or be privy to the making of any material false statement or representation, or suppress, conceal, or assist or join in or be privy to the suppressing, withholding, or concealing from any judge or the officer, or any person assisting the officer, any material document, fact, or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned for a term not exceeding three years, and either with or without hard labour, or to be fined such sum as the court by which he is convicted shall award. The act or thing done or obtained by means of such fraud or falsehood shall be null and void to all intents and purposes, except as against a purchaser for valuable consideration without notice.

58. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the person who has committed such act.

59. Nothing in this act contained shall entitle any person to refuse to make a complete discovery by answer or otherwise to any bill or petition in equity, or to answer any question or interrogatory in any civil proceeding in any court of law or equity, or in the Court of Bankruptcy, but no answer in any such bill, question, or interrogatory shall be admissible in evidence against such person in any criminal proceeding.

60. Where any married woman is desirous of making any



application, giving any consent or doing any act, or becoming party to any proceeding under this act, her husband's concurrence shall be required, and she shall be examined apart from her husband, touching her knowledge of the nature and effect of the application or other act, and it shall be ascertained that she is acting freely and voluntarily, and such examination may be taken by the judge. A married woman entitled to her separate use, and not restrained from anticipation, shall, for the purposes of this act, be deemed a feme sole.

61. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under this act, is a minor, idiot, or lunatic, the guardian or committee of the estate respectively of such person may, with the assent of a judge, make such applications, give such consents, do such acts, and be party to such proceedings as such person respectively, if free from disability might have made, given, done, or been party to, and shall otherwise, with such assent as aforesaid, represent such person for the purposes of this act. Where there is no guardian or committee of the estates of any such person as aforesaid, being infant, idiot, or lunatic, or where any person, the committee of whose estates if he were idiot or lunatic would be authorised to act for and represent such person under this act, is of unsound mind or incapable of managing his affairs, but has not been found idiot or lunatic under an inquisition, it shall be lawful for a judge to appoint a guardian of such person for the purpose of any proceedings under this act, and from time to time to change such guardian; and where a judge sees fit, he may appoint a person to act as the next friend of a married woman for the purposes of any proceeding under this act, and from time to time remove or change such next friend.

62. The record shall be under the management of the following principal officers of the Landed Estates Court; viz. the examiners and the registrar, or of such one of them as the judges shall from time to time direct; and in case of his absence, the judges shall appoint one other of the said officers to supply his place; and the judges shall adjust the duties now performed by the said officers in such manner as may appear expedient for the purposes aforesaid, and shall so arrange the same that some one of the said officers shall be in attendance daily (except as aforesaid) throughout the year; and there shall be paid to such officers, or any of them, or to any other officer or clerk of the court whose duties shall be increased by the operation of this act, such sum, by way of increased annual salary, as the Commissioners of her Majesty's Treasury shall approve, on the recommendation of the said judges. If the Lord Chancellor of Ireland shall now, or at any time hereafter, consider it necessary or expedient, having regard to the business of the court, that additional clerks should be appointed, it shall be lawful for the judges, with the consent of the said commissioners, to appoint such additional clerks to assist in carrying out this act, and there shall be paid to such clerks such salaries as the judges, with the assent of the said commissioners, shall appoint; and such clerks shall be removable by the joint order of the said judges, with the sanction of the Lord Chancellor, and shall be subject to the same regulations, and shall hold their offices during pleasure, and in other respects on the same conditions, and shall be paid out of the same funds, and in the same manner, as the other clerks of the court; and all other expenses of carrying out this act shall be paid out of such moneys as shall be provided by Parliament.

63. All applications to the judge under this act shall be made in chamber, and such judge may direct any matter before him to be argued in court. Any order or decision or direction of the judge, excepting a decision or direction given under the 40th section of this act, shall be subject to the like appeal to the Court of Chancery Appeal in Ireland, and thence to the House of Lords, as is provided by the said related act of the 21 & 22 Vict.

64. A place of address in Ireland shall be entered in a book to be kept for that purpose in the court, for every person whose name is entered on the record as owner of land or of a charge, or as a cautioner, or as entitled to receive any notice; or any such person may, at his option, give from time to time the name and address of any solicitor of the court to act on his behalf. Notices shall be deemed sufficiently served if sent through the notice office of the court, or by registered post-letter to such address as aforesaid.

65. The judges of the court may frame a scale of costs to be paid to solicitors or certificated conveyancers in respect of any service rendered by them in relation to any recorded estate or charge, or any matter connected therewith. Such scale shall be framed with regard to the skill and trouble involved, and the amount of property affected, and not with regard to the length of the documents prepared. Such scale shall be submitted to the Lord Chancellor of Ireland, and shall be approved of by him before it shall be binding, and with the like approval it may be varied. Such scale shall be acted on by all persons having by law or by consent of parties authority to tax or moderate costs.

66. The forms contained in the schedule hereto may be used, but they may be modified or altered to suit the circumstances of every case, and deeds made in such altered forms shall be equally valid and effectual.

67. On the 2nd November of each year after this act shall come into operation the judges shall furnish to the Lord Lieutenant or other chief governor or governors of Ireland a return to be laid before Parliament shewing the number of estates recorded under the act during the year, distinguishing those which are brought in and recorded under the 51st section of this act, and distinguishing estates and interests under settlements separately recorded as aforesaid; and the return shall also shew the amount of fees received during the year pursuant to this act.

68. The judges of the court shall, with the consent of the Commissioners of her Majesty's Treasury, frame a schedule of fees to be received by the recording officer in respect of the following matters, viz.—

1. Transfers, transmissions, and other dealings with recorded estates and charges, having regard to the value of the estates and the amounts of the charges;
2. Recording of estates under the 51st section of this act, having regard to the value of such estates;
3. Entry and cancellation of official notes or entries; lodgment of caveats, and of deeds and other documents; issue of certificates, and other acts to be done by the recording officer;

The judges may, with the consent of the said commissioners from time to time lower or raise such fees, or any of them; all fees shall be paid over so as to form part of the Consolidated Fund of Great Britain and Ireland; the recording officer may also charge any sum actually payable, according to a scale to be sanctioned by the judges, to a surveyor, printer, or scrivener, for services or work necessarily done in respect of any map, entry, certificate, or copy under this act; except as aforesaid, no fees or sums shall be received by any officer or clerk of the court in respect of proceedings under this act.

69. The following rules shall be observed with respect to the collection of fees:—

1. All fees payable shall be received by stamps denoting the amount of fees payable, and not in money;
2. When any fee is payable in respect of a document, a stamp denoting the amount of fee shall be affixed to or impressed on such document;
3. Whenever an adhesive stamp shall be used to denote payment of any fee, such stamp shall be effectually cancelled in such manner as the recording officer shall direct, so as to be incapable of being used again;
4. The Commissioners of Inland Revenue shall provide everything that is necessary for the collection of the moneys hereby directed to be paid by stamps.

70. The several acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue, shall apply to the stamps to be provided in pursuance of this act, and to any document on which such stamps may be affixed or impressed, and to collecting and securing the sums of money denoted by stamps, and to preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if such provisions had been herein repeated and specially enacted with reference to the last-mentioned stamps and sums of money respectively.

#### SCHEDULE.

##### No. 1.—FORM OF TRANSFER OF RECORDED LAND.

I, A. B., the recorded owner of the under-mentioned land, pursuant to the Record of Title Act, Ireland, 1865, in consideration of £— sterling paid to me by C. D., of —, &c.,



do grant to the said C. D., all [*insert description of land taken from or referring to the record, and refer to map (if any)*], to hold to him and his heirs for ever [*or otherwise, according to the nature of the interest transferred.*] Dated this — day of —.

Signed and sealed at the Record  
of Title Office, Landed Estates  
Court, Ireland, in my presence,  
E. F., of —, a solicitor of  
the Court. } I hereby accept the above  
transfer.

Signature —.  
(Seal).

Signature —.  
Address —.

#### NO. 2.—FORM OF CHARGE.

I, A. B., the recorded owner of the under-mentioned land, pursuant to the Record of Title Act, Ireland, 1865, in consideration of £— sterling lent to me by G. H., of —, do charge in favour of the said G. H. the hereditaments described in the schedule hereto with the principal sum of £—, repayable on the — day of —, together with interest thereon at the rate of — per cent. [reducible to —, if paid within a month after due], and payable half-yearly, every — and —. Dated this — day of —.

Witness, &c., } Signature —.  
as above. } (Seal).

I hereby accept the above charge.  
Signature —.  
Address —.

*Schedule above referred to.*

N. B. This form may be adapted to the case of an annuity charged on land.

#### NO. 3.—FORM OF TRANSFER OF CHARGE.

I, the within-named G. H., the recorded owner of a charge under the Record of Title Act, Ireland, 1865, in consideration of £— sterling paid to me by J. K., of —, do transfer to the said J. K. the [within mentioned] charge, on which £— now remains due [together with interest from the date of interest.]

Witness, &c., } Signature —.  
as above. } (Seal).

I hereby accept the above transfer.  
Signature —.  
Address —.

#### NO. 4.—FORM OF POWER OF ATTORNEY TO TRANSFER.

I, A. B., the recorded owner of land [or, a charge] pursuant to the Record of Title Act, Ireland, 1865, do hereby appoint L. M., of —, &c., solicitor, my attorney, for the purpose of [transferring to S. T., of —, &c., absolutely], all my hereditaments, as entered and described in the record of title, under folio [Tyrone, No. 129], and my estate therein [or, my charge, describing it.]

Witness, &c.

Signature —.  
(Seal).

#### CAP. LXXXIX.

An Act to provide for the better Government of Greenwich Hospital, and the more beneficial Application of the Revenues thereof. [5th July, 1865.]

- Sect. 1. Short title.
2. Commencement of act.
3. Interpretation of terms.
4. enactments described in schedule repealed.
5. Power to order new pensions, &c.
6. Power to grant allowances to present inmates.
7. Name of pensions, &c.
8. Assignments, &c. void.
9. Pensions, &c. to be voted.
10. Abolition of commissioners, &c.
11. Power to remove other officers, &c.
12. Annuities to be provided for commissioners, &c.
13. Continuance of superannuation allowance.
14. As to titles, &c. of governor and lieutenant-governor.
15. Appointment of visitor and governor.
16. Annuities to be provided for clerks, &c., if removed.

17. Annuity to be held with half-pay, &c.
18. Power to require clerks for whom annuities have been provided to serve in any suitable capacity.
19. Provision as to annuities on appointment to offices.
20. As to government of the hospital, &c.
21. Expenses to be paid out of money provided by Parliament.
22. As to transfer of real property.
23. Lands to be held for benefit of hospital and subject to this act and the 27 & 28 Vict. c. 57.
24. Quitrents, &c. for lands.
25. Services of tenants.
26. Protection of existing leases.
27. Payment of rents and profits into Bank.
28. Expenses of management, &c.
29. Restrictions on leasing.
30. Power to make free grants of land for places of worship, &c.
31. As to purchase money of land sold.
32. Transfer of stock.
33. Payment of dividends.
34. Transfer of cash balances.
35. Transfer of other personal property.
36. Payment of other income.
37. Not to affect sect. 2 of the 4 & 5 Will. 4, c. 34, as to charge on Consolidated Fund.
38. Conversion of stock, &c.
39. Transfers between capital and income accounts.
40. Change of investment and purchase of lands.
41. The 27 and 28 Vict. c. 57, to apply to this act.
42. Vesting of lands purchased.
43. Devises, &c. for hospital.
44. Sale of advowsons to be arranged similar to those contained in the 26 & 27 Vict. c. 120.
45. Marked stores to be deemed naval stores, as in the 27 & 28 Vict. c. 91.
46. Comptroller of hospital estate.
47. Audit of accounts of property.
48. Audit of money voted.
49. Accounts to be laid before Parliament.
50. Certificate of amount expended.
51. Repayment of money expended to Consolidated Fund.
52. Actions by Admiralty.
53. Saving rights of Crown.
54. Power to sue by information, &c.
55. Transfer of contracts, &c.
56. Continuance of actions, &c.
57. Powers may be exercised by two lords.
58. Style of Admiralty in deeds, &c.
59. Protection of Admiralty.
60. Publication, &c. of Orders in Council.

#### CAP. XC.

An Act for the Establishment of a Fire Brigade within the Metropolis. [5th July, 1865.]

- Sect. 1. Short title.
2. Definition of "metropolis" and "insurance company."
3. Definition of "Metropolis Local Management Acts."
4. Duty of metropolitan board in relation to fires.
5. Purchase of buildings and land.
6. Transfer of plant of existing fire offices.
7. Constitution of fire brigade.
8. Salaries of fire brigade.
9. Power to make regulations for fire brigade.
10. Compensation to parish officers.
11. As to purchase of fire escapes.
12. As to powers of fire brigade.
13. Contributions by insurance offices.
14. Mode of enforcing contributions.
15. Mode of ascertaining proportions of contributions.
16. Penalty on insurance company not making a return.
17. Examination of books of insurance companies.
18. Contributions by Government towards expense of brigade.
19. Expenses of act not specially provided for.
20. Penalty on non-payment of rate by overseers.
21. Power to board, with consent of Treasury, to borrow not exceeding 40,000*l*.
22. Power to turn discharged officers or men out of houses provided for them.

23. Penalty where chimneys are on fire.
24. Recovery of penalties.
25. Summary proceedings for determining certain matters.
26. Extension of powers given to two justices.
27. Audit of accounts, and report by board.
28. Power to delegate powers of board to a committee.
29. Establishment of salvage force by insurance offices.
30. Brigade when employed beyond the metropolis, or on special services.
31. Board to send information of fire to offices.
32. Transfer to board of powers of parishes as to fire-plugs.
33. Definition of "owner."
34. Partial repeal of unrepealed sections of the 14 Geo. 3, c. 78.
35. Partial repeal of the 3 & 4 Will. 4, c. 90.

## CAP. XCI.

An Act to confirm certain Provisional Orders made under an Act of the Fifteenth Year of Her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts.  
[5th July, 1865.]

## CAP. XCII.

An Act to shorten the Time for the Election of Members to serve in Parliament for the Ayr District of Burghs.  
[5th July, 1865.]

## CAP. XCIII.

An Act to consolidate the Offices of Comptroller-General of the Exchequer and Chairman of the Commissioners for auditing the Public Accounts; and for other Purposes.  
[5th July, 1865.]

- Sect. 1. Appointment of Chairman of Commissioners of Public Accounts to office of Comptroller-General on occurrence of next vacancy.*
- 2. Power to abolish office of Chief Clerk of the Exchequer.*
- 3. Annual salary of Comptroller-General and Chairman of Audit Board.*

Whereas by an act passed in the session of the 4 & 5 Will. 4, c. 15, intituled "An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster," it was enacted, that "the constitution and establishment of the Exchequer shall consist of the following officers: (that is to say) a Comptroller-General, to be designated Comptroller-General of the Receipt and Issue of his Majesty's Exchequer, with an annual salary of 2000*l.*, an Assistant-Comptroller, a Chief Clerk, and such number of clerks and assistants, with such salaries as shall be established and regulated from time to time by the Commissioners of her Majesty's Treasury:" and whereas it is expedient that when a vacancy shall occur in the said office of Comptroller-General the duties of the said office shall be performed by the Chairman of the Commissioners for auditing the Public Accounts, and that he shall be appointed Comptroller-General accordingly: be it therefore enacted &c., as follows:—

*Sect. 1.* On the occurrence of the next vacancy in the said office of Comptroller-General, the office of the said Comptroller shall be granted, by letters-patent under the Great Seal of the United Kingdom of Great Britain and Ireland, to the Chairman for the time being of the Commissioners for auditing the Public Accounts; and it shall be incumbent on him and he is hereby authorised to perform all the duties of the said Comptroller, in addition to his duties as such Chairman as aforesaid; and the said letters-patent shall continue in force during good behaviour, subject, however, to the removal of such Comptroller from such office by her Majesty, her heirs and successors, on the address of the two Houses of Parliament, subject also to the abolition of the office, or to its regulation, either as to the salary or the duties thereof, at any future time by the authority of Parliament.

The office of Assistant-Comptroller may be granted to such other of the Commissioners for auditing the Public Accounts as the Commissioners of her Majesty's Treasury shall from time to time appoint for executing the same, any statute to the contrary notwithstanding.

2. The Commissioners of her Majesty's Treasury may, if and when they shall think fit, abolish the office of Chief Clerk

of the Exchequer, upon making adequate provision for the performance of the statutable duties thereof.

3. The person appointed in pursuance of this act to the said offices of Comptroller-General and Chairman of the Commissioners for auditing the Public Accounts shall, in respect of both such offices, be entitled to an annual salary of 2000*l.* and no more, such salary to be paid out of the Consolidated Fund.

## CAP. XCIV.

An Act to amend the Carriers Act. [5th July, 1865.]

- Sect. 1. The term "lace" in the 11 Geo. 4 & 1 Will. 4, c. 68, not to include machine-made lace.*
- 2. Commencement of act.*
- 3. Short title.*

Be it enacted &c., as follows:—

*Sect. 1.* In the Carriers Act (that is to say, the act of the session held in the 11 Geo. 4 & 1 Will. 4, c. 68, "for the more effectual protection of mail contractors, stage coach proprietors, and other common carriers for hire, against the loss of or injury to parcels or packages delivered to them for conveyance or custody, the value and contents of which shall not be declared to them by the owners thereof"), the term "lace" shall, with respect to any parcel or package delivered after the commencement of this act, be construed as not including machine-made lace.

2. This act shall commence from and immediately after the 30th September, 1865.

3. This act may be cited as "The Carriers Act Amendment Act, 1865."

## CAP. XCV.

An Act to amend the Law relating to the Duties on Sugar, and the Drawbacks on those Duties. [5th July, 1865.]

## CAP. XCVI.

An Act to amend the Laws relating to the Inland Revenue.  
[5th July, 1865.]

- Sect. 1. Scale of stamp duties on conveyances, in lieu of scale in the 13 & 14 Vict. c. 97.*
- 2. Scale of stamp duties on appraisements, in lieu of scale in the 55 Geo. 3, c. 184.*
- 3. Scale of stamp duties on awards, in lieu of duties in the 23 & 24 Vict. c. 111.*
- 4. Stamp duty reduced on certain licenses granted by ecclesiastical authority.*
- 5. Agreements for letting small tenements chargeable with 1*d.* stamp duty.*
- 6. Duty on certificates taken out by conveyancers and special pleaders within the first three years of their practice reduced.*
- 7. Stamp duty on charterparties reduced. If stamp not cancelled, charterparties invalid. Terms on which certain charterparties may be stamped after being signed.*
- 8. Reduction of duty on certain time policies of sea insurance. Insurances on a voyage and also for time, how chargeable.*
- 9. Limitation of time for making application for allowance of stamp duty on policies of reinsurance repealed.*
- 10. "Polls." Stamp duties granted on certain policies of assurance, in lieu of former duties thereon.*
- 11. Accidental death policy not to be chargeable as life assurance. Not to repeal or alter the duties payable by the Railway Passengers Assurance Company.*
- 12. Sect. 8 of the 23 & 24 Vict. c. 111, and sect. 29 of the 24 & 25 Vict. c. 91, repealed.*
- 13. Provisions for preventing frauds in relation to the stamp duties imposed by this act on policies of insurance.*
- 14. Meaning of the terms "assurance" and "policy."*
- 15. Policies and instruments of insurance made abroad on behalf of insurers in the United Kingdom, when chargeable with stamp duty. Policies executed abroad to be brought to be stamped within two months after being received in the United Kingdom.*

16. Receipts given for sums deposited on allotments of shares, or for calls on scrip or shares, not to be exempted from stamp duty.
17. Stamp duties on transfers of mortgages.
18. Hawkers' licenses may be renewed before expiration, and new licenses to stand in place of licenses surrendered.
19. First appointments of certain officers of customs not chargeable with stamp duty.
20. No declaration in order to a marriage without license.
21. Stamp duties on certificates of marriage, and of having received the Holy Sacrament, repealed.
22. Appeals against adjudications on stamp duties may be heard in Scotland and Ireland.
23. British spirits in warehouse may be transferred on production of delivery order.
24. Sect. 123 of the 23 & 24 Vict. c. 114, repealed.
25. Amending the law respecting appeals under Excise Acts on complaints before commissioners and justices.
26. Persons convicted of the illegal manufacture of goods liable to excise duty may be afterwards sued for collateral penalties under sect. 33 of the 7 & 8 Geo. 4, c. 53.
27. Liquids containing purified methylic alcohol to be deemed low wines for distilling purposes, and persons distilling the same to be deemed distillers.
28. Preparation of methylic alcohol for distilling spirits to be carried on only in a licensed distillery.
29. Rules and regulations under which the distilling of spirits from such low wines is to be carried on. Spirits to be chargeable with excise duty.
30. Stamp duty of 6d. only on certain contracts under Highway Acts.

Be it enacted &c., as follows:—

Sect. 1. For and in lieu of the scale of stamp duties chargeable under the title "conveyance" in the schedule of the act passed in the 13 & 14 Vict. c. 97, the following scale of stamp duties shall be chargeable; (that is to say),

Where the purchase or consideration money expressed in or upon the principal or only deed, instrument, or writing of conveyance shall not exceed 5l. . . . .	£0	0	6
And where the same shall exceed 5l. and not exceed 10l. . . . .	0	1	0
And where the same shall exceed 10l. and not exceed 15l. . . . .	0	1	6
And where the same shall exceed 15l. and not exceed 20l. . . . .	0	2	0
And where the same shall exceed 20l. and not exceed 25l. . . . .	0	2	6
And where the same shall exceed 25l. and not exceed 50l. . . . .	0	5	0
And where the same shall exceed 50l. and not exceed 75l. . . . .	0	7	6
And where the same shall exceed 75l. and not exceed 100l. . . . .	0	10	0
And where the same shall exceed 100l. and not exceed 125l. . . . .	0	12	6
And where the same shall exceed 125l. and not exceed 150l. . . . .	0	15	0
And where the same shall exceed 150l. and not exceed 175l. . . . .	0	17	6
And where the same shall exceed 175l. and not exceed 200l. . . . .	1	0	0
And where the same shall exceed 200l. and not exceed 225l. . . . .	1	2	6
And where the same shall exceed 225l. and not exceed 250l. . . . .	1	5	0
And where the same shall exceed 250l. and not exceed 275l. . . . .	1	7	6
And where the same shall exceed 275l. and not exceed 300l. . . . .	1	10	0
And where the purchase or consideration money shall exceed 300l., then for every 50l., and also for any fractional part of 50l. . . . .	0	5	0

2. And for and in lieu of the scale of stamp duties chargeable under the title "appraisement" in the schedule to the

act passed in the 55 Geo. 3, c. 184, the following scale of stamp duties shall be chargeable; (that is to say),

Where the amount of the appraisement or valuation shall not exceed 5l. . . . .	£0	0	3
And where it shall exceed 5l. and not exceed 10l. . . . .	0	0	6
And where it shall exceed 10l. and not exceed 20l. . . . .	0	1	0
And where it shall exceed 20l. and not exceed 30l. . . . .	0	1	6
And where it shall exceed 30l. and not exceed 40l. . . . .	0	2	0
And where it shall exceed 40l. and not exceed 50l. . . . .	0	2	6
And where it shall exceed 50l. and not exceed 100l. . . . .	0	5	0
And where it shall exceed 100l. and not exceed 200l. . . . .	0	10	0
And where it shall exceed 200l. and not exceed 500l. . . . .	0	15	0
And where it shall exceed 500l. . . . .	1	0	0

3. And for and in lieu of the scale of stamp duties chargeable under the title "award" in the schedule to the act passed in the 23 & 24 Vict. c. 111, the following scale of stamp duties shall be chargeable; (that is to say),

For and upon every award in England or Ireland, and award or decret arbitral in Scotland, where the amount or value of the matter in dispute shall not exceed 5l. . . . .	£0	0	3
And where it shall exceed 5l. and not exceed 10l. . . . .	0	0	6
And where it shall exceed 10l. and not exceed 20l. . . . .	0	1	0
And where it shall exceed 20l. and not exceed 30l. . . . .	0	1	6
And where it shall exceed 30l. and not exceed 40l. . . . .	0	2	0
And where it shall exceed 40l. and not exceed 50l. . . . .	0	2	6
And where it shall exceed 50l. and not exceed 100l. . . . .	0	5	0
And where it shall exceed 100l. and not exceed 200l. . . . .	0	10	0
And where it shall exceed 200l. and not exceed 500l. . . . .	0	15	0
And where it shall exceed 500l. and not exceed 750l. . . . .	1	0	0
And where it shall exceed 750l. and not exceed 1000l. . . . .	1	5	0
And where it shall exceed 1000l., and also in all other cases not above provided for. . . . .	1	15	0

4. And in lieu of the stamp duty of 2l. now chargeable by law for or upon any license to be granted by any archbishop, bishop, chancellor, or other ordinary, or by any ecclesiastical court, in England or Ireland, or by any presbytery or other ecclesiastical power in Scotland, for any of the following purposes; (that is to say),

- (1). To hold the office of lecturer, reader, chaplain, church clerk, chapel clerk, parish clerk, or sexton:
- (2). For licensing a building for the performance of divine service within an ecclesiastical district formed under the provisions of the New Parishes Act:
- (3). For licensing any chapel for the solemnisation of marriages therein pursuant to the provisions of the 6 & 7 Will. 4, c. 85:
- (4). For licensing or authorising any matter which regards a consecrated building or ground, or anything to be constructed, set up, taken down, or altered therein, or to be removed therefrom:

There shall be charged and paid for or upon any such license as aforesaid the stamp duty of 10s.: provided always, that nothing herein contained shall extend to charge with duty any license expressly exempted from stamp duty by any act of Parliament now in force.

5. Any agreement or memorandum for the letting of a dwelling-house or tenement, or part of a dwelling-house or tenement, for any period less than a year, at a rent payable weekly or monthly, and not exceeding the rate of 3s. 6d. per week, shall be chargeable with the stamp duty of 1d. only in lieu of

any other stamp duty now chargeable on any such agreement or memorandum.

6. And whereas by an act passed in the 10 & 17 Vict. c. 63, certain stamp duties specified in the schedule to the same act annexed are imposed upon a certificate to be taken out yearly by every person, being a member of one of the four Inns of Court in England, and by every person in Ireland, who, in the character of conveyancer, special pleader, draftsman in equity, or otherwise, shall, for or in expectation of any fee, gain, or reward, draw or prepare any conveyance of or deed or instrument relating to any estate or property, real or personal, or any other deed or contract whatever, or any pleadings or proceedings in any court of law or equity: be it enacted, that any such certificate to be taken out by any such person as aforesaid within the period of three years after he shall first begin to practise in manner aforesaid shall be charged with only one half of the said duties respectively.

7. In lieu of the stamp duty of 5s. now chargeable by law on any charterparty, or any document chargeable with stamp duty as a charterparty, there shall be charged and paid thereon the stamp duty of 6d., which may be denoted either by an impressed stamp upon the charterparty or document, or by an adhesive stamp affixed thereon; provided, that if an adhesive stamp be used, the person who shall last sign the charterparty or document, or whose signature shall complete the same as a binding contract, shall at the time of his so signing the same cancel the said stamp by writing thereon his name or the name of his firm, together with the true date of his so writing the same; and in default of so cancelling the adhesive stamp in manner aforesaid, such charterparty or document shall not be good, valid, or available for any purpose whatever: provided always, that if any charterparty or other such document as aforesaid which shall be brought to the Commissioners of Inland Revenue to be stamped within the respective times hereinafter mentioned after the same shall bear date and shall have been first signed, the commissioners shall stamp the same with an impressed stamp on the following terms; (that is to say), if within seven days, on payment of the duty of 4s. 6d.; and if after that time, and within one calendar month after such date and first signing, then on payment of the duty and the sum of 10l.; but after the expiration of the last-mentioned period it shall not be lawful to stamp such charterparty or other document as aforesaid on any pretence whatever: provided always, that if any charterparty, whether printed or written, shall be first signed by any party thereto out of the United Kingdom, such charterparty being unstamped, it shall be lawful for any party thereto within ten days after it shall have been received in this kingdom, and before the same shall have been signed by any person here, to affix thereto an adhesive stamp by writing across the same his name and the date when he shall affix such stamp, and thereupon such charterparty shall be deemed to be duly stamped.

8. And whereas by an act passed in the 7 Vict. c. 21, certain stamp duties contained in the schedule to the same act were imposed on policies of sea insurance in relation to ships or vessels for or upon any voyage, and also for any certain term or period of time: be it enacted, that there shall be charged and paid, in lieu of the duties chargeable under the said last-mentioned act, for and in respect of any such insurance made for a certain term or period of time upon, or in relation to, any ship or vessel, the following reduced rates of duty for every 100l., and also for any fractional part of 100l., whereof the same shall consist; (that is to say),

Where any insurance shall be made upon or in relation to any ship or vessel lying or being in any dock, harbour, or river for any certain term or period of time not exceeding one calendar month . . . . .

£0 0 6

And where any such insurance as aforesaid shall be made for any term, or period of time, exceeding one month, and not exceeding three months, and also where any insurance shall be made upon, or in relation to, any ship or vessel lying or being elsewhere than as aforesaid for any term or period of time not exceeding three months . . . . .

0 1 0

And where any insurance shall be made upon or in relation to any ship or vessel wheresoever the same may be, for any term or period

of time exceeding three months, and not exceeding six months . . . . . £0 2 0  
Exceeding six months . . . . . 0 4 0

And any sea insurance made for or upon a voyage, and also for any certain term or period of time, or to extend to or cover any certain term or period of time beyond twenty-four hours after the ship shall have arrived at her destination, and been there moored at anchor, is hereby declared to be an insurance for a certain term or period of time, as well as an insurance made upon a voyage, and the policy to be chargeable with duty accordingly.

9. And whereas by an act passed in the last session of Parliament, c. 56, s. 1, the time for making application to the Commissioners of Inland Revenue for the allowance for the stamp duty impressed on a policy of reinsurance is limited to a period of three calendar months next after the termination of the risk: be it enacted, that so much of the said section as limits the time for making such application as aforesaid shall be and the same is hereby repealed.

10. And whereas by the said act passed in the 55 Geo. 3 [c. 184], certain stamp duties contained in the schedule to the same act were imposed, under the head or title of "policy," on various descriptions of insurance commonly known by the several names of life insurance, fire insurance, and sea insurance respectively, specifically described and charged with duty as in the said schedule is mentioned; and, lastly, certain duties were imposed upon any policy of insurance whereby any other lawful insurance whatsoever than as aforesaid should be made upon any property or interest whatever from loss or damage of any kind: and whereas by the said act passed in the 23 & 24 Vict. c. 111, certain other stamp duties, described under the head or title of "policy" in the schedule to the last-mentioned act, were also granted and imposed: be it enacted, that in lieu of the duties so granted and imposed by the said two last-recited acts respectively as last aforesaid, so far as they relate to any insurance on which duties are imposed by this act, there shall be charged and paid for and upon any policy of assurance, whereby any lawful insurance not chargeable with stamp duty as life insurance, fire insurance, or sea insurance, shall be made upon any property or interest whatever from loss or damage of any kind, or whereby any sum of money shall be assured or agreed to be paid only upon the death of any person from accident or violence, or otherwise than from a natural cause, or as compensation for a personal injury, or whereby any sum of money shall be assured or agreed to be paid as for loss or damage, or compensation for, or indemnity against, loss or damage arising from, or consequent upon the happening of, any accident, the following duties; (that is to say),

If the premium or consideration for such insurance shall not exceed 2s. 6d. . . . . £0 0 1

And if the same shall exceed 2s. 6d. and shall not exceed 5s. . . . . 0 0 3

And if the same shall exceed 5s., then for every 5s., and also for any fractional part of 5s. of such premium or consideration . . . . . 0 0 3

And where any such insurance as aforesaid shall be made on such terms or conditions that the rates of duty aforesaid cannot be applied to the same, or the policy charged therewith, then, in lieu of the foregoing rates of duty, there shall be charged and paid upon such policy in respect of the amount of the sum insured the same rate of stamp duty as is now chargeable by law on a policy of life assurance.

11. Provided always, that no policy of assurance for payment of any sum of money upon the death of any person only from accident or violence, or otherwise than from a natural cause, shall be deemed to be a policy of life assurance chargeable otherwise than under this act; and provided also, that nothing herein contained shall extend to repeal or alter the duty chargeable under an act passed in the 12 & 13 Vict., intitled "An Act to confer certain Powers on the Railway Passengers Assurance Company" on the sums received by the said company in respect of the insurance tickets issued by them, or to impose any other duty upon or in respect of such tickets.

12. Sect. 8 of the said act of the 23 & 24 Vict. [c. 111], and sect. 29 of an act passed in the 24 & 25 Vict. c. 91, shall be and the same are hereby repealed, save and except as to any arrears of duty or any penalty incurred before the passing of this act.

13. And for preventing frauds in respect of the stamp

duties by this act imposed on policies of insurance, the provisions and penalties contained in sect. 6 of the act passed in the 16 & 17 Vict. c. 59, shall be observed, applied, and put in force in relation to policies of insurance of any description (other than sea insurance) whereon duties are imposed by this act; and further, if any person shall make, sign, or deliver out any policy not duly stamped for denoting the duty by this act charged thereon, he shall forfeit the sum of 20*l.*; and where any insurance shall be made by or for any society or company, the person who shall be a managing director or secretary or other principal officer thereof at the time of committing any offence or unlawful act, neglect, or default for which any penalty is by this or any other act imposed shall be held to be a person committing such offence, or doing or suffering such unlawful act, neglect, or default, and shall, as well as the said society or company, be subject and liable to any and every such penalty as aforesaid.

14. The term "assurance" used in this act shall mean and include insurance, and the term "policy" shall mean and include any agreement or other instrument, by whatever name the same shall be called, whereby any such assurance as aforesaid shall be made or agreed to be made.

15. The stamp duties chargeable under this or any other act for the time being in force upon or in respect of any policy of insurance of any description shall extend to and be deemed to be payable upon and in respect of any policy or other instrument of insurance which shall be made or signed out of the United Kingdom by or on behalf of any person carrying on the business of insurance within the United Kingdom, or by which, according to any stipulation, agreement, or understanding, expressed or implied, any loss or damage or by which, according to any stipulation, agreement, or understanding, expressed or implied, any loss or damage or any sum of money shall be payable or recoverable in the United Kingdom upon the happening of any contingency whatever; and no such policy or other instrument of insurance shall be valid or available in the United Kingdom for any purpose whatever, unless the same shall be duly stamped for denoting the duties chargeable thereon as aforesaid: provided always, that if such policy or instrument shall be brought to the Commissioners of Inland Revenue for the purpose of being stamped as aforesaid within two calendar months next after the same shall have been received in the United Kingdom, and upon proof of that fact to the satisfaction of the said commissioners, they shall cause such policy or instrument to be duly stamped on payment of the duties chargeable thereon; but after the expiration of the said period it shall not be lawful for the commissioners to permit the said policy or instrument to be stamped on any pretence whatever.

16. And whereas by the laws in force receipts given for money deposited in any bank, or in the hands of any banker to be accounted for, are exempted from stamp duty, except receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares, or in respect of calls upon scrip or shares, of or in any joint stock or other company, or proposed or intended company: be it enacted, that such exception shall be deemed to apply wheresoever any such company may be, and shall also extend to receipts and acknowledgments for sums paid or deposited for or in respect of allotments of shares, and calls upon scrip or shares, of or in any loan or proposed or intended loan raised or proposed to be raised by or on behalf of any foreign or colonial government, state, corporation, or company; all which said receipts and acknowledgments, so excepted as aforesaid, by whomsoever given, shall be chargeable with the duty imposed on receipts.

17. And whereas by the said act passed in the 13 & 14 Vict. c. 97, certain stamp duties specified in the schedule to the same act were granted and imposed upon any transfer or assignment, disposition or assignment, of any mortgage or wadset, or of any such other security as in the said schedule is described, or of the benefit thereof, or of the money or stock thereby secured: be it enacted, that in lieu of the said last-mentioned duties there shall be charged and paid for and upon every such transfer or assignment, disposition or assignment, as aforesaid, the following stamp duties; (that is to say),

For every 100*l.* or any fractional part of 100*l.* of the amount or value of the principal money or stock already secured by such mortgage, wadset, or other such security as

aforesaid, thereby transferred, or assigned, or disposed, the duty of 6*d.*:

And if any further sum of money or stock shall be added to the principal money or stock already secured as aforesaid, there shall be charged and paid also the same duty as on a mortgage or wadset for the amount or value of such further money or stock.

18. Any hawkers, pedlar, or petty chapman may apply for a renewed license under the provisions of the statute in that behalf at any time before the expiration of his current license; and on production and surrender of his current license, and payment of the duty chargeable on a new license, it shall be lawful for the officer to grant to him a renewed license, and such officer shall insert therein the days of the commencement and termination of the period for which the same shall be granted, and the day of granting the same, and shall indorse thereon a memorandum of the date and place of surrender of the current license; and such renewed license, so indorsed, shall stand in the place of and be of the same force and effect as the surrendered license during the unexpired term thereof, as well as for the whole of the term for which the renewed license shall have been granted.

19. No stamp duty shall be chargeable upon the first grant or appointment of any person to the office or employment of outdoor officer, boatman, waterman, or watchman in the service of the customs, or upon any commission or deputation granted to him in pursuance of such appointment.

20. No declaration required to be made pursuant to any act relating to marriages in order to a marriage without license shall be chargeable with any stamp duty.

21. And whereas under the title "certificate" in the schedule to the act passed in the 55 Geo. 3, c. 184, a stamp duty of 5*s.* is imposed on a certificate of marriage, and the like duty on a certificate of any person's having received the Holy Sacrament: be it enacted, that the said respective stamp duties last mentioned shall be and the same are hereby repealed.

22. And whereas by the statutes in that behalf her Majesty's Court of Exchequer at Westminster is required to hear appeals against adjudications of the Commissioners of Inland Revenue relating to the stamp duty on deeds as in the said statutes is mentioned: be it enacted, that in cases where deeds shall be presented for the opinion of the said commissioners at their offices in Edinburgh and Dublin respectively, appeals against their adjudications may be heard and determined by her Majesty's Court of Exchequer in Scotland and Ireland respectively, in the same manner and subject in all respects to the like provisions as in the said statutes are respectively enacted with regard to appeals to her Majesty's Court of Exchequer at Westminster.

23. Any British spirits deposited in a general warehouse, in the name of a distiller or dealer in spirits, may be transferred in the book kept by the officer of excise in charge of such warehouse into the name of a purchaser, upon his producing to the officer an order in writing from such distiller or dealer, countersigned by the proprietor of the warehouse or his known servant, for the delivery of the spirits to such purchaser; and all spirits so transferred shall be discharged from all claim in respect of any duties, penalties, or forfeitures to which the distiller or dealer from whom such transfer has been made may be liable, but no spirits shall be delivered out of warehouse for home consumption until payment shall be made of the full duties of excise chargeable thereon.

24. Sect. 123 of the act passed in the 23 & 24 Vict. c. 114, is hereby repealed.

25. In the case of any complaint brought before the Commissioners of Inland Revenue or justices of the peace respectively by virtue of the provisions contained in the 27th section of the act passed in the 4 & 5 Will. 4, c. 51, in respect of any matter or thing which may be the subject of complaint under the said section, if the complainant, or the solicitor, collector, or supervisor to whom notice of such complaint is by law required to be given in such case, shall feel aggrieved by the judgment and determination of the said commissioners or justices respectively, it shall be lawful for either party aggrieved thereby to appeal from such judgment and determination in like manner, and upon giving such notices, and upon such terms, conditions, and regulations (so far as the same shall be applicable), as are prescribed in cases of appeals by the several acts passed respectively in the 7 & 8

Geo. 4, c. 58, the 4 & 5 Will. 4, c. 51, and the 4 Vict. c. 20; provided that no such appeal shall be allowed when the sum in dispute shall not exceed 50*l*.

96. And whereas, by an act passed in the 7 & 8 Geo. 4, c. 53, s. 83, any person discovered, as therein mentioned, aiding or assisting or concerned in the private manufacturing of goods or commodities subject to any duty of excise is liable to the penalty of 30*l*., over and above other penalties mentioned or referred to in the same section of the said act: and whereas doubts are entertained whether a person who has been convicted in the said penalty of 30*l*. can afterwards be lawfully prosecuted for, and convicted in, any such other penalties as aforesaid: be it declared and enacted, that it shall be lawful to proceed against any person for the recovery of all or any of such last-mentioned penalties, notwithstanding he may have been previously convicted in the said penalty of 30*l*.

97. And whereas it is discovered that potable spirits may be obtained from methylic alcohol, by distilling the same after certain processes of purification, by which it is freed from the unpalatable flavours which pertain to it in its crude state, and it is expedient to subject such spirits to the duty of excise chargeable on spirits: be it enacted, that any liquid containing, or having mixed therewith, methylic alcohol which shall have been purified or prepared for distillation by means of filtration, or any other process which may free it, or be intended to free it, wholly or partially from any flavour or odour which might otherwise pertain to it, shall be deemed to be low wines for the purpose of distillation, within the meaning of the laws of excise relating to the distilling of spirits; and every person making, preparing, or having in his possession any such low wines, and having also a still, shall be deemed to be a distiller liable to the several duties, penalties, and forfeitures imposed by law on distillers of spirits.

98. Methylic alcohol which shall have undergone any such process of filtration or purification as aforesaid shall be deemed to have been so prepared for the purpose of distilling spirits therefrom, and no person other than a person duly licensed as a distiller of spirits shall so prepare or purify any methylic alcohol, nor shall any such process as aforesaid be commenced or carried on elsewhere than on premises duly licensed as a distillery, and of which, together with the stills, vessels, and utensils to be used therein, due entry shall have been made with the officers of excise, under pain of such penalties and forfeitures and liability to seizure for any breach of this enactment as would or might be incurred by any act done in contravention of the 3rd section of the act passed in the 23 & 24 Vict. c. 112.

99. The distilling of spirits from any such low wines as aforesaid shall be carried on under and subject to the like rules, regulations, and conditions as are prescribed by the laws in force in relation to the distilling of spirits, and the spirits produced by such distillation shall be deemed to be British spirits, chargeable with the duties of excise, and shall be subject to all the laws, provisions, and regulations relating to British spirits: provided always, that where it shall be made to appear to the Commissioners of Inland Revenue that any of such rules, regulations, or conditions are inapplicable to the making, preparing, or distilling of such low wines as aforesaid, or impose too great a restriction on such distillation, it shall be lawful for the said commissioners to relax or dispense with any of such rules, regulations, or conditions, and to frame others in lieu thereof for the purpose of regulating and facilitating the business of the said distillation, and otherwise in relation thereto, as they shall see fit in that behalf.

90. No contract to be made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways shall be chargeable with any higher stamp duty than 6*d*.

#### CAP. XCVII.

An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively. [5th July, 1865.]

#### CAP. XCVIII.

An Act to allow British Compounded Spirits to be warehoused upon Drawback. [5th July, 1865.]

#### CAP. XCIX.

An Act to confer on the County Courts a limited Jurisdiction in Equity. [5th July, 1865.]

Sect. 1. Jurisdiction in equity to be exercised in county courts in certain suits and matters.

2. In matters under this act, judge and officers of the county courts to have the powers and authorities of a judge and officers of the Court of Chancery.

3. Power to a Vice-Chancellor to order transfer of suits from county court to Court of Chancery.

4. City Small Debts Court to have same jurisdiction in all matters as a metropolitan county court.

5. Power to judge of a county court to order any legacy, &c. to which an infant or person beyond the seas may be entitled to be paid into the Bank of England, in accordance with the provisions of sect. 32 of the 36 Geo. 3, c. 52.

6. Act not to impair jurisdiction of the Stannaries Court.

7. Provisions of County Court Acts as to juries, suitors, and witnesses extended to suitors and witnesses under this act.

8. Power to enforce judgments of county courts in equity.

9. Where amount of subject matter of suit exceeds limit of the jurisdiction of county court, suit may be remitted to Court of Chancery, &c.

10. In what courts proceedings shall be taken.

11. As to transfer of suit from one county court to another.

12. Remuneration of registrars and high bailiffs in matters of equity.

13. Certain fees to be taken, and to be paid over to the Consolidated Fund, and the salaries of the judges to be increased by 500*l*. a year.

14. Judge not obliged to hold courts in the month of September.

15. As to registry of judgments in London.

16. Power to frame rules and orders under the 19 & 20 Vict. c. 108.

17. Scale of costs to be framed by the judges.

18. Parties aggrieved may appeal.

19. Appeal to be made either to the High Court of Chancery or a Vice-Chancellor.

20. Registrar of the Bloomsbury County Court of Middlesex not being an attorney or solicitor, to be entitled to retire from his office with compensation.

21. This act and the 9 & 10 Vict. c. 95, and any act amending or altering the same, to be construed together.

22. Salary of T. Rodgers, Esq., as joint registrar of the County Court of Yorkshire, holden at Sheffield, to be 700*l*. a year.

23. Commencement of act.

Whereas it is desirable to confer on the county courts jurisdiction in equity: be it enacted &c., as follows:—

Sect. 1. The county courts held by virtue of an act passed in the 9 & 10 Vict. c. 95, shall have and exercise all the power and authority of the High Court of Chancery in the suits or matters hereinafter mentioned; that is to say,

(1) In all suits by creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of 500*l*.;

(2) In all suits for the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of 500*l*.;

(3) In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of 500*l*.;

(4) In all suits for specific performance, or for the delivering up or cancelling any agreement for the sale or purchase of any property where the purchase money shall not exceed the sum of 500*l*.;

(5) In all proceedings under the Trustees Relief Acts, or

under the Trustee Acts, or under any of such acts, in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value the sum of 500*l*.:

- (6). In all proceedings relating to the maintenance or advancement of infants in which the property of the infant shall not exceed in amount or value the sum of 500*l*.:
- (7). In all suits for the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership shall not exceed in amount or value the sum of 500*l*.:
- (8). In all proceedings for orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this act to the county court, or for stay of proceedings at law to recover any debt provable under a decree for the administration of an estate made by the court to which the application for the order to stay proceedings is made.

2. In all such suits or matters the judge of a county court shall, in addition to the powers and authorities now possessed by him, have all the powers and authorities, for the purposes of this act, of a judge of the High Court of Chancery; and the treasurer, registrar, and high bailiff shall, in all matters in which the county court has jurisdiction under this act, discharge any duties which an officer of the Court of Chancery can discharge, either under the order of a judge of such court or the practice thereof, and all officers of the county courts shall in discharging such duties conform to any rules or orders to be framed as hereinafter provided.

3. Any one of the Vice-Chancellors, on the application at chambers of any party to any suit or matter pending under this act, shall have power, then and there, or, if he shall think fit, after hearing a summons served upon the other party or parties, to transfer the same to the Court of Chancery, upon such terms, if any, as to security for costs or otherwise, as he may think fit.

4. The judge and officers of the court held under the provisions of the London (City) Small Debts Extension Act, 1852, hereinafter called the "City Court," shall respectively have and exercise the like jurisdiction, powers, and authorities in all respects, except the power of appointing officers, as are for the time being possessed and exercised by the judge and officers respectively of a metropolitan county court; and the chief clerk and the chief bailiff of the City Court shall henceforth be respectively styled the Registrar and High Bailiff thereof, the word "registrar" being interpreted to include the assistant clerks, and the words "high bailiff" the bailiffs of the City Court; and the fees which may be from time to time taken in a county court in any proceeding in which jurisdiction is hereby given to the judge and officers of the City Court shall be taken in the City Court, and shall be paid into the general fund thereof, and the judge and officers of the City Court shall, out of the said general fund, be respectively paid additional salaries of such amount as the mayor, aldermen, and commons of the city of London, in common council assembled, from time to time shall think fit to direct; and such judge and officers of the City Court shall conform to the rules and orders made under the authority of this act.

5. Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found or declared entitled by any county court in any suit or matter under this act may be ordered by the court to be paid to the Accountant-General of the Court of Chancery, in accordance with the provisions of sect. 32 of an act passed in the session of Parliament held in the 36 Geo. 3, c. 52; and the person ordered to pay the same shall, within such time as the court shall direct, produce to the registrar of the court the certificate of the Accountant-General of the payment of such money; and if default be made in such payment the judge may direct a warrant of execution to issue to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels of such person a sum of money equal in amount to the sum which he was ordered to pay to the said Accountant-General and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the said Accountant-General under the direction of the court; and all amounts so paid or transferred into the Court

of Chancery, with any dividends thereon, shall be paid or transferred to the person or persons entitled thereto, or otherwise applied for his or their benefit, on application by summons to one of the Vice-Chancellors while sitting at chambers.

6. Nothing in this act contained shall be construed to impair the jurisdiction of the Stannaries Court, or to give authority to any county court judge to entertain jurisdiction in any case to which the equitable jurisdiction of the said court at present extends.

7. Whenever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the county courts by this act, it shall be summoned from the list of jurors in the possession of the registrar of the county court in which the suit or matter has been brought; and all the enactments relating to the summoning, impanelling, and swearing of a jury in a county court, and to the number of the jury and the unanimity of their verdict, shall apply to every jury summoned under this act; and the duties and obligations of and upon all jurors, suitors, and witnesses, and their liability to penalty and punishment, shall, in any proceeding under this act, be the same as those created, authorised, and imposed by the several statutes now in force relating to county courts.

8. For the due execution of any judgment, decree, or order made under the authority of this act, or of the rules and orders to be framed as hereinafter provided, the court shall have power to order, and the registrar upon such order shall have authority to seal and issue, and the high bailiff to execute, any writ or warrant of possession, writ or warrant of execution, or other process of execution for carrying into effect any judgment, decree, or order of the said court; and such writs, warrants, and processes shall be in the form and executed at the time and in the manner to be set forth in the rules and orders to be framed as hereinafter provided.

9. If during the progress of any suit or matter it shall be made to appear to the court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the county courts is hereby limited, it shall not affect the validity of any order or decree already made, but it shall be the duty of the court to direct the said suit or matter to be transferred to the Court of Chancery, and thereupon the said suit or matter shall proceed in such one of the Vice-Chancellor's Courts as the Lord Chancellor may by general order direct; and such Vice-Chancellor shall have power to regulate the whole of the procedure in the said suit or matter when so transferred: provided always, that it shall be lawful for any party to apply to such Vice-Chancellor at chambers for an order authorising and directing the suit or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the county courts; and the Vice-Chancellor, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

10. With respect to the court in which proceedings in equity shall be taken—

- (1). Proceedings under this act which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments shall be taken in that county court within the district of which the lands, tenements, or hereditaments, or any part thereof, are situate:
- (2). Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the county court within the district of which the persons making the application, or any of them, reside or resides:
- (3). Proceedings for the administration of the assets of a deceased person shall be taken in the county court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode:
- (4). Proceedings in partnership cases shall be taken in the county court within the district of which the partnership business was or is carried on:
- (5). Proceedings for the specific performance, or the delivery up or cancelling of agreements, shall be taken in the county court within the district of which the



defendants, or any one of them, reside or resides, or carry on or carries on business :

- (6). Proceedings in any suit or other matter under this act, which are not otherwise provided for, shall be taken or instituted in the county court within the district of which the defendants, or any or either of them, shall reside or carry on business.

11. If during the progress of a suit or matter it shall be made to appear to the court that the same could be more conveniently prosecuted in some other county court, it shall be competent for the court to transfer the same to such other county court, and thereupon the suit or matter shall proceed in such other county court.

12. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under the jurisdiction in equity given to the courts by this act, by receiving for their own use such fees as may be from time to time authorised to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such orders.

13. In addition to the fees to be authorised to be taken by order of the Commissioners of her Majesty's Treasury as aforesaid, there shall be paid by the suitors the several fees which are specified and set forth in the schedule to this act, or such further or other fees as the said commissioners with the consent of the Lord Chancellor, shall from time to time by order direct, which fees shall be received by the registrar of the court, and accounted for and paid over by him to the treasurer of the court, who shall, at such times as the said commissioners shall direct, pay such fees into the Bank of England, to the credit of the Paymaster-General, to be by him paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and the salaries paid out of such fund to the judges of the county courts shall be increased by 300*l.* a year: provided always, that the salary of the successor to any judge who under this act shall receive a larger salary in the whole than 1500*l.* shall not exceed 1500*l.*: provided also, that if any judge heretofore appointed shall resign his office by reason of any permanent infirmity before he shall have received or become entitled to receive the increased amount of salary payable to him under this act for the full period of five years, any annuity which the Lord Chancellor may recommend to be paid to him upon such retirement shall be calculated with reference to the average amount of salary received or receivable by him for the five years next preceding the date of such retirement, and not with reference to the yearly salary which he shall be entitled to as a judge of a county court at the time of presenting his petition for the grant of an annuity.

14. No judge of any county court shall be obliged to hold any courts during the month of September in any year, unless he shall be ordered by the Lord Chancellor so to do; and if any judge shall be desirous of holding courts in the said month of September, and of being relieved from the obligation to do so at some other period of the year, it shall be lawful for such judge, with the sanction of the Lord Chancellor, to close the courts upon his circuit for any period or periods of time of which the Lord Chancellor shall approve, not exceeding in the whole four weeks in any one year: provided always, that every county court shall always be open for the receipt and payment out of money due under any order of the court, pursuant to the rules and orders in force for the time being, or for any proceeding in bankruptcy before the registrar.

15. Such of the judgments and decrees as may be directed by any rule or order shall be registered with the registrar of county court judgments in London, in such manner as may be therein directed.

16. The county court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceeding therein, under the 32nd section of an act passed in the 19 & 20 Vict. c. 108, shall frame the rules and orders for regulating the practice of the county courts under this act, and forms of proceedings therein, and from time to time amend such rules, orders, and forms; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such judges, or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or

disallow or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall, from a day to be named by the Lord Chancellor, be in force in every county court.

17. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are herein authorised to be taken, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

18. If any party in a suit or matter under this act shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the Vice-Chancellor authorised as aforesaid, provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the county court the sum of 10*l.* as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it shall think fit, and may also make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorise any party to appeal against any decision of a county court, given upon any question as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this act, nor to appeal against the decision of a county court on the ground that the proceedings might or should have been taken in any other county court.

19. In any case which may be the subject of an appeal under this act in causes arising within the county palatine of Lancaster, the appeal may be made either to the High Court of Chancery or a Vice-Chancellor thereof, or to the Court of Chancery of the county palatine of Lancaster or the Vice-Chancellor thereof; and that in case of an appeal to the Court of Chancery for the said county palatine or the Vice-Chancellor thereof, the order on such appeal shall have the same effect as if it had been made by a Vice-Chancellor of the High Court of Chancery; but no appeal shall be made to the Court of Chancery of the said county palatine or the Vice-Chancellor thereof unless the consent thereto in writing of the respondent or respondents on such appeal, or of his or their solicitor or solicitors, shall be first obtained.

20. The present registrar of the Bloomsbury County Court of Middlesex, not being an attorney or solicitor, but holding his office by virtue of sect. 12 of the act passed in the 9 & 10 Vict. c. 95, shall be entitled on the passing of this act to claim and receive compensation for the loss of such office in the same manner as is provided by sect. 38 of the said act; and the amount of compensation to be awarded shall be paid out of moneys that may be voted by Parliament for that purpose.

21. This act and the act passed in the 9 & 10 Vict. c. 95, and any act amending or altering the same, shall be read and construed as one act, as if the several provisions contained in the said acts referred to, not inconsistent with the provisions of this act, were repeated and re-enacted in this act.

22. The salary of Thomas Rodgers, Esq., who, in respect of his abolished office of deputy steward of the court baron of the manor of Ecclesall, in the county of York, became, under the provisions of sect. 11 of the 9 & 10 Vict. c. 95, joint registrar of the county court of Yorkshire, holden at Sheffield, shall, in consideration of the great increase of labour and responsibility of the said last-mentioned office, be, from the passing of this act, 700*l.* a year, notwithstanding the restriction contained in sect. 82 of the 19 & 20 Vict. c. 108; and upon the death, removal, or resignation of either of the persons now in possession of the office of registrar of the said county court, no other person shall be appointed to such office of registrar, jointly or otherwise, until both the persons holding such office on the 1st June, 1865, shall have died, been removed, or have resigned.

23. The provisions of this act shall come into operation

on the 1st October, 1865, except the provisions relating to framing a scale of costs, and making rules and orders of practice and forms of proceeding, and except the provision which relieves the judges from the obligation of holding courts during the month of September without the order of the Lord Chancellor, which provisions shall come into operation on the passing of this act.

## SCHEDULE.

On the commencement of every suit or matter ..	£0	10	0
On setting down any matter for hearing ..	..	1	0
On application for final decree or decretal order .	1	0	0

## CAP. C.

An Act to transfer from the Admiralty to the Board of Trade Powers and Duties relative to certain Harbours.

[5th July, 1865.]

## CAP. CI.

An Act for authorising Transferable Debentures to be charged upon Land in Ireland. [5th July, 1865.]

Sect. 1. *Extent of Act.*2. *Short title.*3. *Interpretation of terms.*4. *Court may certify land to be chargeable with debentures.*5. *Owner of land may issue debentures with sanction of court.*6. *Form and effect of debenture.*7. *Transfer of debentures.*8. *Coupons.*9. *Debentures on unincumbered land.*10. *Debentures on incumbered land.*11. *Priority of debentures.*12. *Debentures mutilated or injured.*13. *Debentures destroyed or lost.*14. *Limitation of principal and interest.*15. *Debentures, personal or real estate.*16. *Debenture to be a charge by way of mortgage.*17. *Provision as to the payment of money into court.*18. *Trusts affecting debentures.*19. *When interest due, application may be made for sale.*20. *Option to be paid out of sale.*21. *Indemnity to trustees as to option.*22. *When debenture due, application may be made for sale.*23. *On consent, new debentures may be issued.*24. *Indemnity to trustees as to consent.*25. *Owner of overdue debenture refusing new one may be paid off by owner of land.*26. *If owner of land under disability, court may appoint guardian.*27. *Court may dismiss proceedings on payment.*28. *Debenture holder to have no claim on court or public funds.*29. *Stamp duties.*30. *Court may frame forms and rules.*31. *General powers.*

Whereas it is expedient to authorise the creation of transferable debentures to be charged upon land in Ireland: be it enacted &c., as follows:—

## Sect. 1. This act shall apply to Ireland only.

2. In any act of Parliament, document, or proceeding, this act shall be sufficiently designated as "The Land Debentures (Ireland) Act, 1865."

3. In the construction of this act, and of this section thereof, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context requiring a different construction:—

The word "court" means the Landed Estates Court of Ireland:

The word "certificate" means a certificate declaring land chargeable with debentures under this act:

The word "debenture" means a debenture charged upon land under this act:

The word "person" extends to and includes a body politic or corporate, whether aggregate or sole, and any company as well as a private individual, and includes also the assignees of any bankrupt or insolvent:

The word "possession" includes the receipt of rents and profits:

The word "land" includes and extends to lands, tenements, and hereditaments held in fee-simple or fee-farm, also impropriate rentcharges in lieu of tithe, and other perpetual rentcharges or annuities and fee-farm rents issuing out of land in Ireland, whether subject or not subject to any incumbrance:

The words "recorded land" mean any land the title to which shall be recorded under the Record of Title Act (Ireland), 1865:

The word "owner," as applied to land or recorded land, means the person or persons entitled for his or their own benefit, at law or in equity, in possession, to a fee-simple, fee-farm, or perpetual interest in any land or recorded land as above defined:

The word "incumbrance" means any legal or equitable charge by mortgage, lien, judgment, decree, rule, or order, Crown bond, recognisance, legacy, portion, trust, or otherwise, whereby any sum of money is secured upon or made payable out of any land, and includes also any easement, and any rentcharge, annuity, or other annual or periodical charge or payment, except only quit and Crown rents, rentcharges in lieu of tithe, and charges imposed by any act for the drainage or improvement of land:

And the word "incumbrancer" means any person entitled to an incumbrance, or to require the payment, discharge, or benefit thereof.

4. It shall be lawful for the owner of any recorded land to apply to the court to have such land declared chargeable with debentures under this act. Thereupon the court shall investigate the title to the land, and its existing state and circumstances. If upon such investigation it appear proper to grant the application, as to the whole or any part of the land, the court shall certify to that effect, and shall cause an entry of such certificate to be made in its books, in such form as it may deem fit.

5. After the entry of such certificate it shall be lawful for the owner of the land described therein, at any time and from time to time, to issue debentures under this act pursuant to such certificate, on satisfying the court that no just rights of other parties which have accrued since the date of the certificate will be injuriously affected thereby. The sanction of the court to the issue of any debenture shall be signified in such manner as the court may by any general order authorise for that purpose.

6. A debenture, when issued under the sanction of the court, shall be well charged upon the land described in the certificate under which it is issued.

All debentures shall be in such form as the court may approve of; for such sums of money, bearing interest at such rate or rates, or not bearing interest, and payable or redeemable at such time or times, not being less than six months, nor more than ten years, from the date of the certificate, as to the court may seem fit.

7. Before sanctioning the issue of any debenture, the court shall cause an entry thereof to be made in its books. After the issue of any debenture under the sanction of the court, the owner of the land charged therewith may transfer such debenture, by means of a memorandum to that effect entered in the books of the court. Every transferee of a debenture may also transfer it by means of a memorandum in the books of the court. The transfer shall be in such form as the court may approve of. It shall vest in the person to whom it is made the ownership of the debenture, and all rights of action or suit which the transferor had at the time of such transfer. Every debenture shall be for a sum of not less than 50*l.*, and shall specify the place where the principal and interest shall be payable.

8. A debenture may have annexed to it coupons, entitling the bearer to the interest payable in respect thereof. The payment to the bearer of any coupon of the amount expressed therein shall be a full discharge to the person paying the same of all liability in respect of the coupon and the interest represented thereby.

9. In the case of unincumbered land, no debenture shall be charged for such a principal sum as, either solely or together with the amount of the principal sum or sums charged on the same land by virtue of any other debenture or debentures, shall be more than ten times the sum which may ap-

pear to the court to be the yearly value of such land, not exceeding, in any case, the value fixed by the public valuation of lands in Ireland, having regard, amongst other matters, to any lease then affecting the same; nor shall there be reserved by any debenture upon such unincumbered land, interest of such annual amount as, either solely or together with the annual interest reserved and charged by any other debenture or debentures upon the same land, shall exceed one-half of what may appear to the court to be its yearly value as aforesaid.

10. If the charge proposed to be created by debenture is to be *puius* or subject to any other incumbrance the court shall have regard thereto, and shall estimate such other incumbrance at its full value; and shall so limit the debentures which it may think fit to issue, that their amount shall be as amply secured as debentures would be if charged on unincumbered land to an amount not exceeding ten times the yearly value thereof.

11. Debentures upon any land shall be *puius* and subject to the several incumbrances specified or referred to in the certificate; also to quit or crown rents, to rentcharges in lieu of tithes, and to charges imposed by any act heretofore made for the drainage or improvement of land. With those exceptions, all debentures charged upon any land shall be the first incumbrances thereon. Where there shall be more than one debenture charged on the same land, there shall be no priority as between the several debentures, notwithstanding any priority in the date or number thereof.

12. In case any debenture shall be given up to the court in a mutilated or injured state, it shall be lawful for the court to cancel such debenture, and to sanction the issue in its place of a new debenture, on such terms and the payment of such fees as the court may consider just.

13. In case it shall be proved to the satisfaction of the court that any debenture was destroyed or lost, it shall be lawful for the court to sanction the issue in its place of a duplicate debenture, marked as such, on such terms and the payment of such fees as the court may consider just; but without prejudice to the rights of any holder of the original debenture, by whom it may afterwards be actually produced. Such duplicate debenture shall be transferable by entry only in the books of the court.

14. Every debenture shall be deemed a sum of money charged upon land within the meaning of sects. 40 and 42 of the 3 & 4 Will. 4, c. 27, intituled "An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereof," and shall be subject to the periods of limitation prescribed by those sections as to principal and interest respectively.

15. Every debenture, when vested in any person other than the owner of the land charged therewith, shall be deemed personal estate; and when vested in the owner of the land, shall be deemed real estate.

16. A debenture shall be deemed to be a charge by way of mortgage, and the money payable under a debenture a mortgage debt, within the operation of the act passed in the 17 & 18 Vict., intituled "An Act to amend the Law relating to the Administration of the Estates of deceased Persons."

17. On the application of the owner of the land charged with any debenture, and on being satisfied by affidavit or otherwise that the principal money has remained unpaid for thirty days by reason of failure on the part of the debenture holder to receive payment, or that there is other proper ground for the application, the court may, if and on such terms as it shall think fit, order that the applicant be at liberty, within seven days or such other time as it shall consider reasonable, to pay the principal due and the interest up to the date of such payment into the Bank of Ireland, to the account of such matter as the court may direct, with the name of the owner of the land, but in trust to attend the orders of the court.

The payment of the money into Bank pursuant to such order shall, as regards the owner of the land, be deemed a payment by him to the holder of the debenture.

18. The land charged, or the owner thereof, shall not be affected by any trust affecting a debenture, or by any notice whatever of such trust; but the party entitled to the benefit of such trust may nevertheless proceed to establish the same as against the holder of the debenture.

19. The owner of any debenture to whom any interest shall remain due for the term of one month after the time

appointed for the payment thereof, shall be at liberty to apply to the court for a sale of the land charged with such debenture.

20. The court shall thereupon give to the holder of every debenture the option either to have the sum due for principal and interest on his debenture paid out of the proceeds of the sale, according to the priority of his demand, or to have the interest only paid, and to permit the principal to remain a charge on the unsold lands until the time appointed by the debenture for payment of the principal.

21. If the owner of any over-due debenture shall be a trustee, he shall not be deemed guilty of a breach of trust, nor be accountable for the manner in which he may exercise such option.

22. The owner of any debenture which shall remain unpaid at the time appointed by such debenture for payment of the principal thereof, may apply to the court for a sale of the land charged therewith.

23. In case the owner of any debenture, and the owner of the land charged therewith, shall so consent, it shall be lawful for the court to sanction the issue of a new debenture in place of such over-due debenture, which new debenture shall bear such interest, and shall be payable at such time, as shall be therein expressed.

24. If the owner of any over-due debenture shall be a trustee, he shall not be deemed guilty of a breach of trust by reason of his giving or withholding his consent to the acceptance of such new debenture.

25. In case the owner of any over-due debenture shall refuse to accept a new debenture in lieu thereof, the owner of the land charged therewith may pay off the same, and apply to the court to sanction the issue of a new debenture in lieu thereof.

26. If the owner of any land shall be under any disability, the court may appoint a guardian ad litem for such owner; and the consent and directions of such guardian shall have the same effect as if the owner had been under no disability, and had given such consent or directions.

27. The court shall have authority to dismiss any proceeding upon payment of interest and costs, or on such further or other terms as it may deem equitable.

28. Under no circumstances shall the holder of a debenture have any claim whatever upon the court, or upon any public funds, in respect of any mistake or omission relating to the value, quality, or title of or to the estate, or otherwise howsoever.

29. Within the meaning of the several acts in force relating to stamps, a certificate under this act shall be deemed to be a deed not specifically charged nor expressly exempted. A debenture shall be deemed to be a mortgage made as a security for the amount of the principal money thereby secured, and a transfer of a debenture shall be deemed to be a transfer of a mortgage.

Provided that no debenture shall be transferred by means of a memorandum in the books of the court until it shall have been stamped with the amount of stamp duty applicable in the case of mortgages given by public companies, as mentioned in the 14th section of the 16 & 17 Vict. c. 59.

30. The court may frame and promulgate all such forms, rules, and directions as it shall consider requisite or expedient for the assistance and guidance of persons acting under this act; for annulling certificates; for regulating the transfer of debentures; for calling in or cancelling debentures, and for the issue of orders, in case of forgery, abstraction, destruction, defacement, or other like inconvenience; for the giving of notices; and generally for facilitating or regulating the course of procedure, or giving effect to the purposes and provisions of this act.

31. The court shall also have the same or the like powers and authorities for the purposes of this act as it has for those of the act or acts of Parliament under which it is at present constituted, as well in relation to the appointment or removal and to the salaries of necessary officers, as also to the making of general orders, the conduct or costs of proceedings, the production of documents or examination of witnesses, and to any other matter requisite for effecting the objects of this act.

#### G.A.P. CII.

An Act to amend an Act of the Twentieth and Twenty-first Years of Her Majesty, for the Abatement of the Nuisance

arising from the Smoke of Furnaces in Scotland, and an Act of the Twenty-fourth Year of Her Majesty to amend the said Act. [5th July, 1865].

## CAP. CIII,

An Act to provide for the Discontinuance of a separate Court of Quarter Sessions and a separate Gaol in the Borough of Falmouth. [5th July, 1865.]

- Sect. 1. Short title.  
2. Commencement of act.  
3. Falmouth to cease to have separate court of quarter sessions.  
4. Provision as to prison at Falmouth.  
5. Removal of prisoners in Falmouth prison.  
6. Prison at Falmouth to belong to county of Cornwall.  
7. Compensation and superannuation allowances to recorder, &c. at Falmouth.

## CAP. CIV,

An Act to amend the Procedure and Practice in Crown Suits in the Court of Exchequer at Westminster; and for other Purposes. [5th July, 1865.]

- Sect. 1. Short title.  
2. Division of act into parts.  
3. Extent of act.  
4. Commencement of act.  
5. Construction, as to Attorney-General, &c.  
6. Interpretation of terms in Part II.  
7. Printing of information.  
8. Abolition of subpoenas and distringas, and substitution of service of printed information.  
9. Mode and effect of service of printed information.  
10. Printed information served to be first marked by officer.  
11. Sale to defendant of printed copies.  
12. Amendments to be subject to same rules.  
13. Form, &c. of interrogatories.  
14. Defendant not bound to answer unless interrogated.  
15. Time for defendant to put in plea, answer, or demurrer, &c.  
16. Contents of answer.  
17. Abolition of commissioners to take answers, &c.  
18. Swearing of answers, &c. in Scotland, &c.  
19. False swearing, &c. perjury.  
20. Oath of messenger abolished.  
21. Alteration of mode of taking evidence.  
22. Application of sect. 103 of 17 & 18 Vict. c. 125.  
23. Proceeding in case of abatement of suit, &c.  
24. Statement of new facts on record.  
25. Writs in counties palatines to be directed to sheriffs.  
26. Power to court to rectify errors in procedure.  
27. Saving for distringas to restrain transfer of stock, &c.  
28. Power to court to make general rules.  
29. Provision as to pending suits.  
30. Fees, remuneration, &c., to be appointed by Treasury with concurrence of barons.  
31. Appeal, &c. in proceedings at law on revenue side of Exchequer.  
32. Effect of appeal as to stay of execution.  
33. Repeal of sect. 36 of 18 & 19 Vict. c. 90, and sect. 14 of 20 & 21 Vict. c. 62.  
34. Evidence of defendants, &c.  
35. Application of sect. 103 of 17 & 18 Vict. c. 125.  
36. Abolition of writ of distringas.  
37. Suits against British subjects resident out of jurisdiction of Exchequer.  
38. Suits against foreigners resident out of jurisdiction of Exchequer.  
39. Forms of writs in schedule.  
40. Omission to insert or indorse matters in or on writs not to nullify it.  
41. Amendment in case of substitution by mistake, &c. of one writ for another.  
42. Writs for service in and out of jurisdiction.  
43. Affidavit may be sworn before a consul, &c.  
44. False swearing, perjury.  
45. Provision as to pending suits.  
46. Provision for change of venue and for view.  
47. Extents and writs of *diem clausit extremum*,

48. Future Crown debts, &c. not to affect land till writ of execution issued and registered.  
49. Mode of registration, and discontinuance of other modes of registration.  
50. Provisions of the 25 Geo. 3, c. 35, as to sale, &c. to apply in all cases.  
51. Saving the prerogative of the Crown.  
52. Inquiry on objection to inquisition finding Crown's title.  
53. Enactments in third schedule repealed.  
54. Construction of Part V.  
55. Summary proceedings for account and payment of succession or legacy duty.  
56. Summary proceedings for payment of succession or legacy duty assessed.  
57. Summary proceedings for payment of probate duty.  
58. Court may before judgment order report and special case.  
59. Appeal in summary proceedings and on appeal from assessment.  
60. Courts of appeal.  
61. Notice of appeal; and bail.  
62. Power to Court to make general rules.  
63. Forms of writs in schedule.  
64. Application of procedure and practice of revenue side of court.

Be it enacted &c., as follows:—

## PART I.—PRELIMINARY.

Sect. 1. This act may be cited as "The Crown Suits, &c. Act, 1865."

2. This act shall be deemed to be divided into five parts, as follows:—

Part I, preliminary:

Part II, relating to proceedings by English information in the Court of Exchequer:

Part III, relating to proceedings at law on the revenue side of the Court of Exchequer:

Part IV, relating to certain other classes of proceedings where the Crown is interested:

Part V, relating to recovery of succession, legacy, and probate duty in certain cases.

3. This act shall extend to England only.

4. This act shall commence from and immediately after the 1st November, 1865; general rules under this act may nevertheless be made before that time, but not so as to commence before it.

5. With respect to the construction of this act, the following provisions shall have effect:—

(1). The provisions of this act relative to her Majesty's Attorney-General shall be construed as applying also to her Majesty's Solicitor-General, when a vacancy in the office of Attorney-General or other occasion so requires:

(2). The provisions of this act relative to the Crown, or to her Majesty in right of the Crown, shall be construed as applying also to the Duchy of Lancaster, or to her Majesty in right of that duchy, when the case so requires:

(3). The terms "party" and "parties" where used in this act include, and the same terms where used in any enactment extended and applied by this act shall for the purposes of this act include, her Majesty's Attorney-General, and the Attorney-General of the Prince of Wales and Duke of Cornwall, as the case may require:

(4). The term "a judge," where used in this act, means any judge of one of her Majesty's superior courts of law at Westminster transacting business out of court.

## PART II.—PROCEEDINGS BY ENGLISH INFORMATION IN THE COURT OF EXCHEQUER.

6. In this part of this act—

The term "the Court of Exchequer" or "the court" means her Majesty's Court of Exchequer at Westminster exercising jurisdiction or authority in suits relating to the revenues of the Crown and of the Duchies of Lancaster and Cornwall instituted and conducted according to the forms of equitable procedure:

The term "information" means an information, styled an

English information, exhibited in the Court of Exchequer in the name of her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall, as the informant, and includes an information and bill:

The term "suit" or "cause" means a suit or cause commenced by information:

and, except as expressly provided otherwise, nothing in this part of this act shall be deemed to apply to any proceedings other than proceedings in suits commenced by information.

7. An information shall be printed, and shall be received and filed in print, and not otherwise.

8. The writ of subpoena to appear to and answer an information, and the writ of distringas against a corporation to appear to an information, are hereby abolished; and in lieu of the service of such writs respectively, there shall be served a printed information, having an indorsement thereon, in the form given in the first schedule to this act, with such variations as circumstances require.

9. Except in case of a corporation aggregate, such service shall be effected as service of a writ of subpoena is now effected (save that the original information shall not be produced), and shall have the same effect in all respects as service of a writ of subpoena now has; and in case of a corporation aggregate, such service shall be effected by delivery of a printed information, having an indorsement thereon as aforesaid, to the mayor or other head officer, or to the town clerk, clerk, treasurer, or secretary of the corporation.

10. The information served shall be first so marked by the proper officer of the court as to indicate the filing of the information and the date of the filing.

11. A defendant shall be entitled to have as many printed copies of the information as he requires, on paying for them at such rate as general rules under this part of this act direct.

12. On amendment of an information, the foregoing provisions shall extend and apply, *mutatis mutandis*, to the information as amended; but an information may be amended in writing in such cases as general rules direct.

13. An information shall not contain interrogatories, but the informant, within such time as general rules direct, may file interrogatories for the examination of defendants from whom he requires an answer, and deliver to each such defendant, or his solicitor, a copy of the interrogatories, or of such of them as are applicable to the particular defendant.

14. A defendant shall not be bound to put in an answer, unless interrogatories have been filed, and unless a copy has been delivered as aforesaid.

15. A defendant, whether required to answer or not, may, without leave of the court or a judge, put in a plea, answer, or demurrer, within such time as general rules direct; but after that time, a defendant not required to answer shall not be at liberty to put in a plea, answer, or demurrer, except by leave of the court or a judge; nevertheless, the power of the court or a judge to grant further time for pleading, answering, or demurring, on the application of a defendant, whether required to answer or not, shall remain unaffected.

16. An answer may contain not only the defendant's answers to the interrogatories, if any, but also such statements material to the case as he thinks fit to set forth therein.

17. Commissions to take pleas, answers, disclaimers, and examinations are, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the court, hereby abolished; and any such plea, answer, disclaimer, or examination may be filed, without any formalities other than such as are required in relation to an affidavit.

18. Pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and protestations of honour in causes depending in the court may be sworn and taken in Scotland, Ireland, the Isle of Man, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any court or judge, or before any notary public, or before any person authorised to administer oaths there, or in any foreign parts out of her Majesty's dominions before any of her Majesty's consuls or vice-consuls there; and every such instrument may be used, and shall be admitted in evidence, saving just exceptions; and judicial and official notice shall be taken of the seal or signature of any such court, judge, notary public, person, consul, or vice-consul affixed, appended, or subscribed to any such document.

19. Any person wilfully and corruptly swearing, declaring, affirming, or protesting falsely in any plea, answer, disclaimer, examination, affidavit, declaration, affirmation, or protestation of honour so taken out of England, shall be deemed guilty of perjury in every case where, having so sworn, declared, affirmed, or protested before competent authority in England, he would be deemed guilty of perjury, and may be dealt with, indicted, tried, and (if convicted) sentenced, and his offence may be laid and charged to have been committed, in any county or place in England in which he is in custody as if the offence had been actually there committed.

20. Pleas, answers, disclaimers, and examinations, whether taken by commission out of the jurisdiction of the court or otherwise, may be filed without the oath of a messenger, and any alteration made therein before the taking thereof shall be authenticated as in the case of an affidavit.

21. By general rules the examination of witnesses on written interrogatories may be discontinued, and such amendments as from time to time seem fit may be made in the mode of taking evidence and the practice relative thereto; and for the purpose of such evidence any officer or person from time to time directed by general rules or by an order of the court or a judge to take such evidence may administer oaths and take declarations.

22. The court shall be deemed to be a court of civil judicature within the meaning of sect. 103 of the Common-law Procedure Act, 1854.

23. Where a suit becomes abated by death or otherwise, or becomes defective by reason of some change or transmission of interest or liability, an order to the effect of an order to revive, or of a supplemental decree, may be obtained as of course on an allegation of the abatement of the suit, or of the same having become defective, and of the change or transmission of interest or liability; and the parties who would in the same case be defendants to an information of revivor or supplemental information shall, when served with such order, be parties to the suit, and be bound to appear within such time and in such manner as general rules direct, subject to the following provisions:—

(1.) It shall be open to any party so served (within such time after service as general rules direct) to apply to the court or a judge to discharge the order on any ground that would have been open to him on an information of revivor or supplemental information:

(2.) If any party so served is under any disability other than coverture, the order shall be of no effect as against such party until a guardian ad litem has been appointed for such party, and such time has elapsed thereafter as general rules direct.

24. Facts or circumstances occurring after the institution of a suit may be introduced by way of amendment into the original information if the cause is otherwise in such a state as to allow of the information being amended, and if not, may be stated on the record in such manner, and subject to such regulations with respect to the proof thereof, and to the affording defendants leave and opportunity to answer and meet the same, as general rules direct.

25. Writs issuing out of the court to be executed in the counties palatine shall be directed and delivered to the sheriffs of those counties, and shall be executed and returned by them to the court in all respects as writs are executed and returned by sheriffs of other counties.

26. If in any suit any direction of this part of this act or of general rules under it by mistake of parties fails to be followed, the court or a judge may (if it seems fit), on payment of such costs as the court or a judge directs, make such order, giving effect to and rectifying the proceedings, as appears justified by the merits of the case.

27. Notwithstanding anything in this part of this act or in any other act, a writ of distringas (in such form as general rules under this part of this act from time to time direct) to restrain the transfer of stock transferable at the Bank of England, or the payment of the dividends thereon, shall continue to be issuable from the office of the Queen's Remembrancer on behalf of her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall.

28. The Lord Chief Baron and two or more barons of the court shall from time to time make such general rules as seem fit for carrying this part of this act into execution, and for regulating the sittings of the court, and the procedure and

practice in suits by information, and in other proceedings in the court.

29. Nothing in this part of this act, or in any general rules made under it, shall apply to any suit commenced by information filed before the commencement of this act; nevertheless in any such suit the court or a judge may, if it seems fit, on hearing the parties, from time to time direct that the procedure and practices prescribed in this part of this act, or in any general rules made under it, be followed in the court in any respect.

30. The Commissioners of her Majesty's Treasury, with the concurrence of the Lord Chief Baron and two or more barons of the court, may from time to time, if they think fit, appoint fees to be charged on proceedings in suits in the court, which fees shall be collected by stamps, and such provisions of the Common-law (Fees) Act, 1865 [28 & 29 Vict. c. 45], as relate to the collection by stamps of the fees therein referred to, shall extend and apply to the fees to be taken under this section; and there shall be paid to any officer of the court or other person employed in taking examinations of witnesses, or discharging other duties connected with proceedings in suits in the court, such remuneration, if any, as the Commissioners of her Majesty's Treasury, with the concurrence aforesaid, from time to time direct.

### PART III.—PROCEEDINGS AT LAW ON THE REVENUE SIDE OF THE COURT OF EXCHEQUER.

31. The provisions of sects. 34 to 37, and 39 to 45 (all inclusive), and of sects. 59 and 95 of the Common-law Procedure Act, 1854, shall extend and apply to the revenue side of her Majesty's Court of Exchequer at Westminster as a court of law (to which court the term "the court" when hereafter used in this part of this act refers), in the same manner as those provisions apply to the plea side of that court.

32. In any suit or proceeding at law on the revenue side of the court notice of appeal shall be a stay of execution on the following condition, but not otherwise, namely—that within eight days after the decision complained of, or before execution delivered to the sheriff, bail to pay the sum recovered and costs, or to pay costs when adjudged, be given to the same amount and be approved of in like manner as bail in error is required to be given and approved of under the rules of the court for the time being in force, except where the court or a judge otherwise orders; but such bail shall not be necessary where the appellant is her Majesty, or her Majesty's Attorney-General on behalf of her Majesty in right of the Crown or in right of the Duchy of Cornwall, or the Attorney-General of the Prince of Wales and Duke of Cornwall, or where the appellants are the Commissioners of Inland Revenue.

33. Sect. 36 of the Supplemental Customs Consolidation Act, 1855 [18 & 19 Vict. c. 96], and sect. 14 of the Customs Amendment Act, 1857 [20 & 21 Vict. c. 62], shall, from and after the commencement of this act, be repealed.

34. Sects. 2 and 3 of the act of the session of the 14 & 15 Vict. (c. 90), "to amend the Law of Evidence," and the Evidence Amendment Act, 1853, shall extend and apply to proceedings at law on the revenue side of the court; and any proceeding at law on the revenue side of the court shall not, for the purposes of this act, be deemed a criminal proceeding within the meaning of the said sections and act as extended and applied by the present section.

35. The revenue side of the court, as a court of law, shall be deemed to be a court of civil judicature within the meaning of sect. 103 of the Common-law Procedure Act, 1854.

36. In a suit at law on the revenue side of the court a writ of distringas against a corporation aggregate to compel an appearance shall not be necessary; but in such a suit a writ of subpoena or scire facias (as the case may require) may issue against a corporation aggregate to compel an appearance; and service of such a writ may be effected by delivery thereof, or of a copy thereof, to the mayor or other head officer, town clerk, clerk, treasurer, or secretary of the corporation; and the like proceedings to judgment may be taken on a writ of subpoena or scire facias so issued as, according to the practice for the time being of the Court of Exchequer, may be taken on a like writ issued against an individual defendant.

37. In a suit at law on the revenue side of the court against a British subject resident out of the jurisdiction of the court in any place except Scotland or Ireland, the in-

formant may sue out against that person a writ of subpoena bearing an indorsement stating that the writ is for service out of the jurisdiction of the court; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where he is resident; and the court or a judge, on being satisfied by affidavit that the writ was personally served on the defendant, or that reasonable efforts were made to effect personal service thereof on him, and that it came to his knowledge, and either that he wilfully neglects to appear to the writ, or that he is living out of the jurisdiction of the court in order to defeat the claim to which the information relates, may order from time to time that the informant be at liberty to proceed in the suit in such manner and subject to such conditions as to the court or a judge seem fit, the time allowed for the defendant to appear being reasonable, and regard being had to the other circumstances of the case; but it shall be a condition precedent to the informant's obtaining judgment that he give proof of the merits of the claim to the satisfaction of the court or a judge, or of the officer of the court to whom the court think fit to refer the matter.

38. In a suit at law on the revenue side of the court against a person, not a British subject, resident out of the jurisdiction of the court in any place except Scotland or Ireland, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of writ used in that case the informant shall issue a writ of subpoena commanding the defendant to appear within the time therein prescribed, after service on him of notice of the writ, and shall in manner aforesaid serve a notice of the writ on the defendant; and such service shall have the same effect as service of the writ of subpoena in a suit against a British subject resident out of the jurisdiction of the court; and thereupon, by leave of the court or a judge, on their or his being satisfied by affidavit, the like proceedings may be had and taken as aforesaid.

39. The forms of writs of subpoena and of notice given in the second schedule to this act applicable in the respective cases aforesaid shall be used in those cases, with such variations as circumstances require, but general rules relating to the process and practice at law of the revenue side of the court may from time to time prescribe any such altered, additional, or substituted forms of writs of subpoena and notice for use in the respective cases aforesaid as seem fit, and the same shall be used accordingly.

40. If in any such case the informant omits to insert in or indorse on any writ or copy thereof any of the matters for the time being required to be inserted therein or indorsed thereon, such writ or copy shall not on that account be void, but it may be set aside as irregular, or it may be amended on such terms as to the court or a judge seem fit, either on an application to the court or a judge for such amendment, or on an application to set aside the writ.

41. If in any such case one form of writ of subpoena is by mistake or inadvertence substituted for another, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in the suit, but on an ex parte application to a judge, either before or after an application to set aside such writ or any proceeding thereon, and whether the writ or notice thereof has been served or not, the writ may be amended by a judge without costs.

42. A writ of subpoena for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction, and a writ of subpoena for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction.

43. An affidavit for the purpose of enabling the court or a judge to make an order for liberty to proceed against a defendant resident out of the jurisdiction of the court may be sworn at any foreign port or place before any of her Majesty's consuls or vice-consuls there; and every affidavit so sworn may be used and shall be admitted in evidence, saving just exceptions; and judicial and official notice shall be taken of the seal or signature of the consul or vice-consul affixed or subscribed to any such affidavit.

44. If any person wilfully and corruptly makes a false affidavit before such consul or vice-consul he shall be deemed guilty of perjury, as if the false affidavit had been made in England before competent authority, and may be dealt with, indicted, tried, and (if convicted) sentenced, and his offence may be laid and charged to have been committed in any



county or place in England in which he is in custody, as if the offence had been actually there committed.

45. No repeal or other provision in this part of this act shall affect or apply to any suit or proceeding instituted or taken before the commencement of this act.

**PART IV.—CERTAIN OTHER CLASSES OF PROCEEDINGS WHERE THE CROWN IS INTERESTED.**

46. Where a cause in which her Majesty's Attorney-General on behalf of the Crown is entitled to demand as of right a trial at bar is at any time depending in any of her Majesty's superior courts of law at Westminster, whether instituted before or instituted after the commencement of this act, and the Attorney-General states to the court that he waives his right to a trial at bar, the following provisions shall have effect:—

- (1). The court, on the application of the Attorney-General, shall change the venue to any county in which the Attorney-General elects to have the cause tried;
- (2). The court may (if requisite) order that the sheriff of the county into which the venue is removed do cause a view to be had by jurors of that county (notwithstanding that the view must be taken and had by such sheriff and jurors out of their own county);
- (3). For the purposes aforesaid the court may make such orders as seem necessary or proper; and all such orders shall be binding on all sheriffs and other officers, and on all jurors and other persons concerned, and shall be sufficient warrant for the doing of everything thereby authorised or directed to be done;
- (4). The powers of the judges of the superior courts of law, and of the judges of the Court of Exchequer, as a court of revenue at law respectively to make general rules for the regulation of procedure and practice, and of costs, charges, and expenses, shall extend to the making of such general rules as from time to time seem fit for the better execution of this section;
- (5). Subject to any such rules, the provisions of the Common-law Procedure Act, 1852, and of any rules made under it, and all other law and practice for the time being in force relative to change of venue and to views, shall extend to the cases of change of venue and view to which this section relates.

47. A commission to find a debt due to the Crown shall not be necessary for authorising the issue of an immediate extent or of a writ of *diet clausit extremum*; and an immediate extent may be issued on an affidavit of debt and danger, and a writ of *diet clausum extremum* may be issued on an affidavit of debt and death (similar, *mutatis mutandis*, to the affidavit of debt and danger, or of debt and death, on which, after inquisition returned, an immediate extent or a writ of *diet clausum extremum* has been used to be issued), and on the fiat of the Chancellor of the Exchequer, or of a baron of her Majesty's Court of Exchequer at Westminster, or of a judge of her Majesty's Court of Queen's Bench or Common Pleas at Westminster.

48. Any judgment, decree, or order obtained after the commencement of this act by or on behalf of the Crown, or any recognisance entered into after the commencement of this act on the proper account of the Crown, or any inquisition finding after the commencement of this act a debt due to the Crown, or any obligation or specialty made after the commencement of this act to the Crown, or any acceptance of office accepted after the commencement of this act from or under the Crown, shall not affect any land (of whatever tenure) as to a bona fide purchaser for valuable consideration or a mortgagee (whether such purchaser or mortgagee have or have not notice of the judgment, decree, order, recognisance, inquisition, obligation, specialty, or acceptance of office), unless a writ of extent or of *diet clausit extremum*, or other writ or process of execution, in pursuance of or in relation to such judgment, decree, order, recognisance, inquisition, obligation, specialty, or acceptance of office, has been issued and registered before the execution of the conveyance or mortgage to such purchaser or mortgagee, and the payment by him of the purchase or mortgage money.

49. The registration of such writ or process shall be effected

as follows; namely—a minute of the name of the person against whom the writ or process is issued, and of the date of the issuing thereof, and of the amount for which it is issued, shall be left with the senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book by the name in alphabetical order of the person against whom the writ or process is issued; and no other registration of such writ or process, or of the judgment, decree, order, recognisance, inquisition, obligation, specialty, or acceptance of office, in pursuance of or in relation to which it is issued, shall be necessary for any purpose. There shall be paid for every such entry a fee of 2s. 6d.; and all persons shall be at liberty to search the said book, with the other books in the office, on payment of a fee of 1s.

50. The act of the 25 Geo. 3, c. 35, "for the more easy and effectual sale of lands, tenements, and hereditaments of Crown debtors or of their sureties," shall extend to authorise the sale, subject and according to the provisions of that act, of any land taken in execution by virtue of any writ or process of execution issued after the commencement of this act, by any court of law or equity, for enforcing the payment of any sum of money to or in favour of the Crown.

51. Nothing in this part of this act shall take away or abridge any prerogative or right of the Crown, in respect of priority or otherwise, over or against the creditors of any debtor or accountant to the Crown, and save as in this part of this act expressly provided, every prerogative or right of the Crown as against the land of any debtor or accountant to the Crown, or over or against the creditors of any such debtor or accountant, shall remain in all respects as if this part of this act had not been enacted.

52. With respect to inquests of office or inquisitions after the commencement of this act finding the title of her Majesty in right of the Crown or in right of the Duchy of Cornwall, or the title of the Prince of Wales and Duke of Cornwall, to any real property, the following provisions shall have effect:—

- (1). If in any such case a copy of the inquisition is served on any person, and such person thinks himself aggrieved by any description of boundary or other finding therein, he may within six months after such service, or within such enlarged time as her Majesty's Court of Exchequer at Westminster or a judge may think fit to allow, file in the office of the Court of Exchequer in which the inquisition is filed a statement in writing of his objection to the inquisition;
- (2). On any such objection being filed, the Court of Exchequer or a baron thereof, on the application of the proper officer on behalf of her Majesty in right of the Crown or in right of the Duchy of Cornwall, or on behalf of the Prince of Wales and Duke of Cornwall (as the case may require), may appoint a fit person to inquire into the matter of the objection; and the person so appointed shall hold an inquiry on or near the land in question, or at some other convenient place (notice of the time and place for the holding of the inquiry being given to the person objecting); and for the purposes of such inquiry the person so appointed shall have power to summon witnesses and administer oaths;
- (3). The person so appointed shall make a return in writing to the Court of Exchequer of the result of the inquiry, which return shall be filed in the office in which the inquisition is filed; and if in any respect the return and the inquisition differ in effect, the inquisition shall be deemed to be altered so as to conform with the return;
- (4). Where a copy of an inquisition is served as aforesaid, an affidavit of service shall be filed in the office in which the inquisition is filed, and an office copy of such affidavit shall be evidence of the service;
- (5). Nothing in this section shall take away or abridge the right of any person to traverse an inquisition.

**PART V.—RECOVERY OF SUCCESSION, LEGACY, AND PROBATE DUTY, IN CERTAIN CASES.**

53. The enactments described in the third schedule to this act, as far as they relate to England, shall from and after the commencement of this act be repealed, but not so as to affect any proceeding pending at the commencement of this act, or



any appeal or other step capable of being brought or taken therein or in relation thereto, or any right, title, obligation, liability, forfeiture, or penalty acquired, accrued, or incurred before the commencement of this act; and every such proceeding, appeal, step, right, title, obligation, liability, forfeiture, and penalty may be continued, brought, taken, maintained, and enforced as if this act had not been passed.

54. In this part of this act—

The term "the Succession Duty Act" means the Succession Duty Act, 1853:

The term "the Legacy Duty Acts" means the acts for charging duties on legacies and shares of the personal estates of deceased persons, so far as those acts relate to England:—

The term "the Court of Exchequer" means her Majesty's Court of Exchequer at Westminster.

This part of this act as far as it relates to duty under the Succession Duty Act and Legacy Duty Acts shall be read with the Succession Duty Act as one act.

55. If any person accountable for or chargeable with duty under the Succession Duty Act or the Legacy Duty Acts, required by the Commissioners of Inland Revenue to deliver an account under those acts or any of them, makes default in doing so, the commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account and to pay the duty and the costs of the proceedings, or to shew cause to the contrary; and on cause being shewn such order shall be made as seems just.

56. Where, in pursuance of the Succession Duty Act or the Legacy Duty Acts, the Commissioners of Inland Revenue make an assessment of duty, and the duty is not paid, and there is no notice of appeal against the assessment under sect. 50 of the Succession Duty Act, or of disputing the liability to assessment, the commissioners may sue out of the Court of Exchequer a writ of summons commanding the person liable for the duty, or the owner of any property expressly charged therewith, to pay the duty payable by him and the costs of the proceedings, or to shew cause to the contrary, and on cause being shewn such order shall be made as seems just.

57. If any person takes possession of and in any manner administers any part of the personal estate of any person deceased without obtaining probate of his will or letters of administration of his estate within six months after his decease, or within two months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there is any such suit or dispute that is not ended within four months after the death, the Commissioners of Inland Revenue may sue out of the Court of Exchequer a writ of summons commanding the person so taking possession and administering as aforesaid to deliver to the commissioners an account of the estate of the deceased and of its value, and to pay such duty as would have been payable if probate or administration had been obtained and the costs of the proceedings, or to shew cause to the contrary, and on cause being shewn such order shall be made as seems just; and any such proceedings shall be a waiver of all penalties incurred in the premises by such person as aforesaid.

58. In proceedings by writ of summons as aforesaid the court may, if they think fit, refer the matter to the proper officer to report thereon, and may, if they think fit, order the facts contained in his report to be stated in the form of a special case for the opinion of the court, and give directions as to the mode of settling the case, and the matters to be contained therein, and for the production of any documents, and may, if they think fit, direct any issue or issues of fact to be tried by a jury; and the court may proceed to give judgment on the special case, and for any amount of duty which the court are of opinion is due to the Crown, and for costs; and on such judgment error may be brought and judgment given as on a special case stated by consent.

59. In proceedings by writ of summons as aforesaid, and also in cases of appeal to the Court of Exchequer from the assessment of the Commissioners of Inland Revenue under sect. 50 of the Succession Duty Act, an appeal shall lie from the decision of the court or a judge on a case stated by the parties, or, if they differ, settled by the Court of Exchequer or a judge, or any officer of the Court of Exchequer, to whom the same is referred by the court or a judge; and the court of appeal shall give such judgment as ought to have been given by the Court of Exchequer or judge, and may award costs.

60. The appeal in all such cases as aforesaid shall be made to the Court of Error in the Exchequer Chamber, and the decision of that court shall be subject to appeal to the House of Lords.

61. No such appeal shall be allowed unless notice thereof is given in writing to the opposite party or attorney, and to the proper officer of the Court of Exchequer, within four days after the decision complained of, or such further time as may be allowed by the court or a judge; and bail shall be given and approved of as provided with respect to suits at law on the revenue side of the Court of Exchequer.

62. The Lord Chief Baron and two or more barons of the Court of Exchequer shall from time to time make such general rules as seem fit for carrying this part of this act into execution, and for regulating the procedure and practice in proceedings by writ of summons as aforesaid.

63. The forms of writs of summons given in the fourth schedule to this act, applicable in the respective cases aforesaid, shall be used in those cases, with such variations as circumstances require; but general rules under this part of this act may from time to time prescribe such altered, additional, or substituted forms of writs of summons for use in the respective cases aforesaid or any of them as seem fit, and the same shall be used accordingly.

64. Subject to the provisions of this part of this act, and to general rules made thereunder, proceedings by writs of summons as aforesaid shall be deemed proceedings at law on the revenue side of the Court of Exchequer within the meaning of sects. 10, 11, and 16 to 22 (both inclusive) of the act of the session of the 22 & 23 Vict. (c. 21), "to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer."

## SCHEDULES.

### THE FIRST SCHEDULE.

#### FORM OF INDORSEMENT ON ENGLISH INFORMATION UNDER PART II.

To the within-named C. D.  
Victoria R.

We command you [and every of you, *where there are more defendants than one*], that within — days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Court of Exchequer at Westminster to the within-contained information, and that you observe what our said court directs.

Witness —, at Westminster, this — day of —, 18—.

NOTE.—If you fail to comply with the foregoing directions, an appearance may be entered for you, and you will be liable to be arrested and imprisoned [or, *in case of a corporation*, and be distrained by all your lands and chattels], and to have a decree made against you in your absence.

Appearances are to be entered at the Queen's Remembrancer's Office, Chancery-lane, London.

### THE SECOND SCHEDULE.

#### FORMS OF WRITS OF SUBPENA AND NOTICE UNDER PART III.

(A).

*Writ where Defendant, being a British Subject, is resident out of Jurisdiction of Court of Exchequer.*

Victoria, &c.

To C. D., of —, in the county of —.

We command and strictly enjoin you, that within [here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from England] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Exchequer at Westminster, to answer us concerning certain articles then and there on our behalf to be objected against you; and take notice, that in default of your so doing, we shall proceed thereon to judgment and execution.

Witness, &c.

[Memorandum to be subscribed on writ.]

This writ is to be served within [six] calendar months

from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*[Indorsement to be made on writ before service thereof.]*

At the suit of her Majesty's Attorney-General *[or as the case may be.]*

By information.

This writ is for service out of the jurisdiction of the Court of Exchequer, and is issued by E. F., the solicitor of *[as the case may be]*,

*[if for penalties],*

for the forfeiture by you of £— for penalties under the statutes relating to the revenue of customs *[or excise, stamps, taxes, &c., as the case may be]*;

*[or, if for duties or a debt],*

for the recovery of £— for duties due from you under the statutes relating *[&c., as before—or state shortly the nature of the debt.]*

Take notice, that in default of your entering an appearance in the Court of Exchequer, according to the exigency of this writ, an information may be filed and judgment signed thereon, and execution issued on such judgment, together with costs, at the expiration of fourteen days from the day or signing such judgment.

(B.)

*Writ where Defendant, not being a British Subject, is resident out of the Jurisdiction of Court of Exchequer.*

Victoria, &c.

To C. D., late of —, in the county of —.

We command and strictly enjoin you, that within *[here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from England]* days after notice of this writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Exchequer at Westminster, to answer us concerning certain articles then and there on our behalf to be objected against you; and take notice, that in default of your so doing, we shall proceed therein to judgment and execution.

Witness, &c.

*[Memorandum to be subscribed on writ.]*

Notice of this writ is to be served within *[six]* calendar months from the date thereof, including the day of such date, and not afterwards.

*[Indorsement as on writ (A.)]*

(C.)

*Notice of last foregoing Writ.*

To C. D., *[late of Brighton, in the county of Sussex]*, residing at *[Paris, in France.]*

Take notice, that in the name of the Attorney-General of her Majesty Queen Victoria of the United Kingdom of Great Britain and Ireland *[or, as the case may be]*, E. F., the solicitor of *[as the case may be]*, has commenced proceedings at law against you, C. D., in her Majesty's Court of Exchequer at Westminster, by writ of that court, dated the — day of —, A.D. 18—,

*[if for penalties],*

for the forfeiture by you of £— for penalties under the statutes relating to the revenue of customs *[or, excise, stamps, taxes, &c., as the case may be]*;

*[or, if for duties or a debt],*

for the recovery of £— for duties due from you under the statutes relating *[&c., as before, or state shortly the nature of the debt.]*

Take notice, that you are required within — days after the receipt of this notice, inclusive of the day of such receipt, to defend yourself against the said proceedings, by entering an appearance in the said Court of Exchequer, and that in default of your so doing an information may be filed, and the said E. F. may, by leave of that court or of a judge of one of her Majesty's superior courts of law at Westminster, proceed thereon to judgment and execution.

(Signed)

F. F.,  
Solicitor of —.

### THE THIRD SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND BY PART V.

42 Geo. 3, c. 90—An Act for allowing the stamping certain Deeds until the 31st December, 1802; for amending an Act passed in the Thirty-sixth Year of the Reign of His present Majesty, relating to Duties on Legacies and Shares of Personal Estates; for exempting certain Legacies from the Payment of Duty; for reducing the Allowances on present Payment of Stamp Duties; and for reducing certain Stamp Duties on Policies for Sea Insurances.—*Sect. 2.*

16 & 17 Vict. c. 51—The Succession Duty Act, 1853.—*Sections 47 and 48.*

22 & 23 Vict. c. 21—An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer.—*Sections 12, 13, 14, and 15.*

24 & 25 Vict. c. 92—An Act to amend the Law for the Collection of the Stamp Duties on Probates, Administrations, Inventories, Legacies, and Successions.—*Sect. 1.*

### THE FOURTH SCHEDULE.

FORMS OF WRITS OF SUMMONS UNDER PART V.

(A.)

*For Account and Payment by Executor.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part— within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said acts, and have made default therein.

Now, we command you —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the legacies and of all the property of the said —, deceased, paid or to be paid or administered by you as such execut— as aforesaid, and that you do within the same time pay the duty chargeable upon the said legacies and property of the said —, deceased, and the costs of these proceedings; or that you, the said —, do within the same time appear before the barons of our said Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit, upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(B.)

*For Account and Payment by Administrator.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part— within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said acts, and have made default therein.

Now, we command you —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the personal estate and effects of the said —, deceased, paid or to be paid or administered by you as such administrat— as aforesaid, and that you do within the same time pay the duty chargeable upon the said personal estate and effects of the said —, deceased, and the costs of these proceedings; or that you, the said —, do within the same time appear before the barons of our said Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(C.)

*For Account and Payment by Trustees, Legatees, &c.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part— within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said acts, and have made default therein.

Now, we command you, —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of —, and that you do within the same time pay the duty chargeable —, and the costs of these proceedings; or, that you, the said —, do within the same time appear before the barons of our said Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(D.)

*For Account and Payment by Successor, Trustee, &c.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part— within the true intent and meaning of the Succession Duty Act, 1853, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said act, and have made default therein.

Now, we command you, —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the property to which, or to the income whereof, — became beneficially entitled as successor — on the death of —, deceased, by reason of the disposition thereof made by —, and that you do, within the same time, pay the duty chargeable on the same succession and the costs of these proceedings; or, that you, the said —, do within the same time appear before the barons of our Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(E.)

*For Accounts and Payment by Executor, being also Successor.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part— within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account pursuant to the said acts, and have made default therein.

Now, we command you, —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the legacies and of all the property of the said —, deceased, paid or to be paid or administered by you as such executor as aforesaid, and also an account of all the property to which, or to the income whereof, you have — become beneficially entitled as such successor as aforesaid upon the death of the said —, deceased —; and that you do within the same time pay the duty chargeable, under the Legacy Duty Acts upon the said

legacies and property of the said —, deceased; and also the duty chargeable under the said Succession Duty Act upon the said property as — succession — as aforesaid, and the costs of these proceedings; or that you, the said —, do within the same time appear before the barons of our Exchequer at Westminster, and shew cause why you make default in the premises; and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(F.)

*For Payment of Succession Duty when assessed.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before our barons of the Exchequer at Westminster, that you, being — accountable part — within the true intent and meaning of the Succession Duty Act, 1853, have, as required by the said act, delivered to our Commissioners of Inland Revenue an account of the property for the duty whereon you are accountable, and that the said commissioners have, in pursuance of the said act, assessed the duty on such account, but that you, —, have made default in payment of the same, or some part thereof.

Now we, having been likewise given to understand in manner aforesaid, that there has been no appeal from the said assessment, and no notice of disputing the liability to the same, command you, —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do pay to the said Commissioners of Inland Revenue, or their proper officer, the said duty so assessed, or such part thereof as shall at the time of such service be by law due and payable, and the costs of these proceedings; or, that you, the said —, do within the same time appear before the barons of our said Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

(G.)

*For Account and Payment of Probate Duty.*

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to —, greeting:

Whereas we have been given to understand, in our court before the barons of the Exchequer at Westminster, that you, having taken possession of, and administered some part or parts of, the personal estate and effects of —, deceased, have not obtained probate of the will (or letters of administration of the estate and effects) of the said —, deceased, within the time required by law.

Now, we command you, —, that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to our Commissioners of Inland Revenue an account, upon oath, of the estate and effects of the said —, deceased, and of the true value thereof, and that you do within the same time pay to the said Commissioners of Inland Revenue such duty as would have been duly payable on such probate (or letters of administration) as aforesaid if the same had been duly obtained by you, and the costs of these proceedings; or, that you, the said —, do within the same time appear before the barons of our said Exchequer at Westminster, and shew cause why you make default in the premises, and this you, —, are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

CAP. CV.

An Act to continue the Poor-law Board for a limited Period.  
[5th July, 1865.]

Sect. 1. Continuance of the Poor-law Board for one year.

## CAP. CVI.

An Act to authorise Loans in aid of the Construction of Docks in British Possessions. [5th July, 1865.]

- Sect. 1. Short title.
2. Interpretation of terms.
3. Power to Treasury to issue out of Consolidated Fund any sums not exceeding 300,000*l.* to account of Admiralty.
4. Account of Admiralty to be opened at Bank of England.
5. Money issued to be carried to account of Admiralty.
6. Loans for docks to be out of money issued.
7. Loan not restricted as to powers of borrower.
8. Priority of mortgages under this act.
9. Style of Admiralty in deeds, &c.
10. Signatures, &c. of two commissioners.
11. Mortgaged property to vest in Admiralty, &c.
12. Payment of interest and repayment of principal.
13. Transfer back to Consolidated Fund.
14. Agreements for loans to be laid before Parliament.
15. Agreements before passing of this act confirmed.

## CAP. CVII.

An Act to continue certain Turnpike Acts in Great Britain. [5th July, 1865.]

## CAP. CVIII.

An Act to confirm certain Provisional Orders under the Local Government Act, 1864, relating to the Districts of Nottingham, Rusholme, Plymouth, Redcar, Cardiff, Kingston-upon-Hull, Guildford, Ramsgate, Ryde, Workington, and Oxford, and for other Purposes relative to certain Districts under the said Act. [5th July, 1865.]

## CAP. CIX.

An Act for transferring the Ulster Canal to the Commissioners of Public Works in Ireland. [5th July, 1865.]

## CAP. CX.

An Act to confirm a certain Provisional Order under the Local Government Act, 1864, relating to the Hastings District. [5th July, 1865.]

## CAP. CXI.

An Act to regulate the Disposal of Money and Effects under the Control of the Admiralty, belonging to deceased Officers, Seamen, and Marines of the Royal Navy and Marines, and other Persons. [5th July, 1865.]

## Sect. 1. Short title.

2. Interpretation of terms.
3. Residue belonging to deceased officers, seamen, or marines.
4. Residue belonging to deceased persons in civil service of navy.
5. Residue exceeding 100*l.* to be paid to representative.
6. Residue not exceeding 100*l.* to be paid to representative, if any.
7. Power to require certificate, &c. before representation.
8. Residue not exceeding 100*l.*, and no representation, power to pay it to widow, &c.
9. Admiralty not bound to pay to nominee of representative.
10. Admiralty not to dispose of residue for three months, &c.
11. Provision for payment of debts out of residue.
12. Saving for existing claims.
13. Provision as to unsold effects, &c.
14. Disposal of medals and decorations.
15. Exemptions from duty.
16. Validity of payments, sales, &c. under this act.
17. Her Majesty may make Orders in Council.
18. Orders in Council to be published in the London Gazette.
19. Commencement of act.

So it enacted &c., as follows:—

Sect. 1. This act may be cited as "The Navy and Marines (Property of Deceased) Act, 1865."

## 2. In this act—

The term "the Admiralty" means the Lord High Admiral

of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral:

The term "officer" means a commissioned, warrant, or subordinate officer, or assistant engineer, in her Majesty's naval or marine force:

The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part, in any capacity, of the complement of any of her Majesty's vessels, or otherwise belonging to her Majesty's naval or marine force (not being an officer within the meaning of this act), or a petty officer or man of the Royal Naval Reserve or Naval Coast Volunteers:

The term "representation" includes probate and letters of administration, with or without will annexed:

The term "representative" means any person taking out representation:

The term "person" includes a corporation.

3. On the death of any person being or having been an officer, seaman, or marine, the amount (if any) to the credit of the deceased in the books of the Admiralty, in respect of sale of effects, arrears of pay, wages, prize money, bounty money, grants, or other allowances in the nature thereof, or other money payable by the Admiralty (which amount is hereafter in this act, with reference to every such case, called the residue), shall be disposed of according to the provisions of this act.

4. On the death of any person being or having been employed in any of her Majesty's dockyards or other naval establishment, or in any of the civil departments of the navy, or entitled to an allowance from the Compassionate Fund, or of any widow entitled to a pension on the establishment of the navy, the amount (if any) due by the Admiralty (which amount is hereafter in this act, with reference to every such case, called the residue), shall be disposed of according to the provisions of this act.

5. Where the residue exceeds 100*l.* the Admiralty shall dispose thereof by paying it to the representative of the deceased.

6. Where the residue does not exceed 100*l.* it shall not be necessary for any purpose that representation to the deceased be taken out; but in any case the Admiralty may, if they think fit, require representation to be taken out; and if, on that requisition or otherwise, representation is taken out, then the Admiralty shall dispose of the residue by paying it to the representative.

7. In the case, nevertheless, of a seaman or marine, the Admiralty shall not be bound to pay the residue (whatever be its amount) to the representative of the deceased, if representation has been taken out either by a creditor as such, or by any person without such certificate respecting the title to representation having been first obtained from the Admiralty, or such other regulations or conditions having been duly observed or performed, as is or are prescribed by Order in Council; and in any such case the Admiralty shall dispose of the residue in pursuance of this act as if representation had not been taken out.

8. Where the residue does not exceed 100*l.*, and representation is not taken out, then, subject to the other provisions of this act, the Admiralty shall, as soon as may be, dispose of the residue as follows:—

(1). They shall, if they think fit, pay the residue to any person showing himself or herself, to their satisfaction, to be entitled to take out representation to the deceased (otherwise than as a creditor)—to the end that the residue may be applied by the person to whom it is so paid in due course of administration; and the same shall be so applied accordingly (for which application the Admiralty may require such security as they think fit):

(2). Or else the Admiralty shall, if they think fit, pay to the persons (if any) beneficially interested in the residue their respective shares thereof:

(3). And in cases where the foregoing provisions of the present section do not apply, and the amount of the residue appears to the Admiralty insufficient to cover the expense of representation, the Admiralty shall dispose of the residue in manner prescribed by Order in Council.

9. In the case of a seaman or marine, the Admiralty shall not pay the residue, or any part thereof, to any nominee of

the representative of the deceased, or of a person entitled to take out representation to the deceased, whether such nominee be appointed by power of attorney or otherwise, unless in special circumstances it appears to the Admiralty safe and proper to make such payment to any such nominee.

10. Notwithstanding anything in this act, the Admiralty shall not in any case dispose of the residue, or any part thereof, otherwise than by paying the same to the representative of the deceased, until after the expiration of three months from the receipt by the Admiralty of notice of the death, unless in special circumstances it appears to the Admiralty safe and proper to dispose of the residue, or any part thereof, at an earlier time.

11. In the case of a seaman or marine, where representation is not taken out, the Admiralty shall, before disposing of the residue, or any part thereof, satisfy out of the residue (as far as the same will extend) any debt of the deceased of which they have notice, subject to the following conditions:—

First.—That the debt accrued due within three years before the death:

Second.—That payment of it is claimed within two years after the death:

Third.—That the claimant proves the debt to the satisfaction of the Admiralty:

Fourth.—That six months have elapsed from the receipt by the Admiralty of notice of the death, and no person has shewn herself or himself to the satisfaction of the Admiralty to be entitled to take out representation to the deceased.

In any such case, any person claiming to be a creditor of the deceased shall not be entitled to obtain payment of his debt out of any money being under this act in the hands of the Admiralty by any means or proceeding whatever, except by means of a claim lodged with the Admiralty, and proceedings thereon, under and according to this act.

12. Nothing in this act shall prejudicially affect the claim of any creditor in respect of a debt incurred before the commencement of this act.

13. The provisions of this act relative to the residue, in the case of a deceased officer, seaman, or marine, shall extend and apply, *mutatis mutandis*, to unsold effects and money (if any) in charge of the Admiralty.

14. Medals and decorations belonging to an officer, seaman, or marine dying on service shall not be considered as comprised in the personal estate of the deceased with reference to the claims of creditors, or for any of the purposes of administration under this act, or otherwise; and notwithstanding anything in this or any other act, the same shall be held and disposed of according to regulations prescribed by Order in Council.

15. Where the residue does not exceed 100*l.*, and is administered and disposed of under this act without representation being taken out, it shall not be liable to the payment of any duty; and if in any case the Admiralty under this act require security by bond for the application of a residue in due course of administration, the bond shall be exempt from stamp duty where an ordinary administration bond relative to the same residue would be so exempt; but this provision shall not affect any exemption from duty existing independently thereof.

16. Every payment or application of money, and every sale or other disposition of property, made by the Admiralty in pursuance of this act, or of any Order in Council for carrying this act into effect, shall be good and valid as against all persons whomsoever; and the Admiralty shall be, by virtue of this act absolutely discharged from all liability in respect of the money or other property so paid, applied, or disposed of.

17. Her Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of any of the purposes of this act.

18. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and if not, then within thirty days after the next meeting of Parliament.

19. This act shall commence on such day, not later than the 1st January, 1866, as her Majesty in Council thinks fit to direct.

Any Order in Council for the better execution of any of the purposes of this act may nevertheless be made before that day, but not so as to commence before it.

## CAP. CXII.

An Act to repeal Enactments relating to Powers of the Commissioners of the Admiralty, and to various Matters under the Control of the Admiralty. [5th July, 1865.]

Sec. 1. *Repeal of enactments in schedule.*

2. *Commencement of act.*

3. *Publication of Orders in Council.*

4. *Short title.*

Whereas the enactments described in the schedule to this act relate either to powers of the Admiralty, or to protection of the Royal Dockyards, or to naval and marine pay and pensions, or to wills or property of deceased officers, seamen, and marines, and others, or to matters connected therewith, and the same either have ceased to be in force, or on the commencement of divers acts of the present session will cease to be in force, and it is therefore expedient that the same be expressly repealed: be it therefore enacted &c., as follows:—

Sec. 1. The enactments described in the schedule to this act are hereby repealed; but this repeal shall not affect the past operation of any such enactment, or the force or operation of any Order in Council, or regulation or instruction made or given, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before the commencement of this act; nor shall this act interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any enactment hereby repealed.

2. This act shall commence on such day, not later than the 1st January, 1866, as her Majesty in Council thinks fit to direct; nevertheless her Majesty in Council may, if it seems fit, with reference to any places out of the United Kingdom, direct that this act do not, in respect of the repeal of any of the enactments in the schedule described, commence there, respectively, until a time after that day, and with respect to every such place the time so appointed shall be deemed the time of commencement of this act.

3. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting; and if not, then within thirty days after the next meeting of Parliament.

4. This act may be cited as "The Admiralty, &c. Acts Repeal Act, 1865."

## SCHEDULE.

## ENACTMENTS REPEALED.

9 & 10 Will. 3, c. 41 (9 Will. 3, c. 41, in the Statutes of the Realm).—An Act for the better preventing the Imbezement of His Majesty's Stores of War, and preventing Cheats, Frauds, and Abuses in paying Seamen's Wages.

4 Ann. c. 16 (4 & 5 Ann. c. 3, in the Statutes of the Realm), in part.—An Act for the Amendment of the Law and the better Advancement of Justice.—*In part, namely, sect. 26.*

9 Geo. 3, c. 30.—An Act for repealing so much of an Act passed in the Tenth Year of Her late Majesty Queen Anne as relates to the Harbour Moorings of the Royal Navy, and for the more effectual Preservation of such Moorings, and Punishment of Persons guilty of stealing or embezzling Her Majesty's Naval Stores, or of Forgery or Perjury in relation to Seamen's Wages.

54 Geo. 3, c. 159, in part.—An Act for the better Regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays, and navigable Rivers in the United Kingdom, and of His Majesty's Docks, Dockyards, Arsenals, Wharfs, Moorings, and Stores therein; and for repealing several Acts passed for that Purpose.—*In part, namely, sects. 2 to 9, and 17 to 20 (all inclusive).*

57 Geo. 3, c. 118.—An Act for authorising the Executors or Administrators of deceased licensed Navy Agents to receive Prize Money, Bounty Money, and other Allowances of Money upon Orders given to such deceased Agents.

59 Geo. 3, c. 56.—An Act to make further Regulations as to the Payment of Navy Prize Orders.

59 Geo. 3, c. 59.—An Act to extend the Provisions of an Act made in the Fifty-fifth Year of His present Majesty, for the Payment of Wages due to deceased Seamen and Marines, to Wages due to intestate Bastards.

1 Geo. 4, c. 85.—An Act to make further Provisions respecting Naval Prize Money.

1 & 2 Geo. 4, c. 93—An Act for vesting all Estates and Property occupied by or for the Naval Service of this Kingdom in the Principal Officers and Commissioners of His Majesty's Navy, and for granting certain Powers to the said Principal Officers and Commissioners.

10 Geo. 4, c. 26, in part—An Act for transferring the Management of Greenwich Out-Pensions and certain Duties in Matters of Prize to the Treasurer of the Navy.—*In part, namely, sects. 11, 13, 14, and 32.*

11 Geo. 4 & 1 Will. 4, c. 20, in part—An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy.—*Except sect. 80.*

11 Geo. 4 & 1 Will. 4, c. 41, in part—An Act to make further Regulations with respect to Army Pensions.—*In part, namely, sect. 3, as far as relates to naval or marine pensions.*

2 & 3 Will. 4, c. 40, in part—An Act to amend the Laws relating to the Business of the Civil Department of the Navy, and to make other Regulations for more effectually carrying on the Duties of the said Department.—*Except sects. 1, 5, 6, and 7.*

4 & 5 Will. 4, c. 25—An Act to alter and amend the Provisions of an Act passed in the Eleventh Year of the Reign of His late Majesty King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy.

5 & 6 Will. 4, c. 24—An Act for the Encouragement of the voluntary Enlistment of Seamen, and to make Regulations for more effectually manning Her Majesty's Navy.—*In part, namely, sect. 7.*

7 Will. 4 & 1 Vict. c. 26, in part—An Act for the Amendment of the Laws with respect to Wills.—*In part, namely, sect. 12.*

5 Vict. c. 3—An Act to alter an Act of the Eleventh Year of King George the Fourth, for amending the Laws relating to the Pay of the Royal Navy, and an Act of the Fifth Year of King William the Fourth, to alter the Provisions of the said Act.

6 & 7 Vict. c. 58—An Act to enable Her Majesty to acquire Lands for the Enlargement of Her Majesty's Dockyards, and for other Naval Purposes.

13 & 14 Vict. c. 62—An Act to alter and extend an Act passed in the Eleventh Year of King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy.

15 & 16 Vict. c. 46—An Act to amend an Act of the Eleventh Year of King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy.

16 & 17 Vict. c. 60, in part—An Act to make better Provision concerning the Entry and Service of Seamen, and otherwise to amend the Laws concerning Her Majesty's Navy.—*In part, namely, sects. 3, 11, and 19.*

17 & 18 Vict. c. 19, in part—An Act for facilitating the Payment of Her Majesty's Navy, and the Payment and Distribution of Prize Bounty, Salvage, and other Moneys to and amongst the Officers and Crews of Her Majesty's Ships and Vessels of War, and for the better Regulation of the Accounts relating thereto.—*In part, namely, sect. 13.*

26 & 27 Vict. c. 30—An Act to authorise further Harbour Regulations for the Protection of Her Majesty's Ships, Dockyards, and Naval Stations.

#### CAP. CXIII.

An Act to authorise the Payment of Retiring Pensions to Colonial Governors. [5th July, 1865.]

- Sect. 1. Definition of "colony."  
 2. Full rate of pension as herein stated.  
 3. Reduced rate.  
 4. When full rate may be granted.  
 5. When reduced rate may be granted.  
 6. Permanent civil service not to be counted under this or any other act.  
 7. Deductions from pension on account of half pay, &c.  
 8. Advancement to high rates of pension.  
 9. Person receiving pension bound to accept employment till of age of sixty; not to relinquish it till sixty-five.  
 10. As to pension of person also employed in civil service.

11. What to be deemed employment in civil service.

12. Secretary of State to determine when an officer is in administration of Government.

13. Statement of pensions to be laid before Parliament.

#### CAP. CXIV.

An Act for confirming, with Amendments, certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Eastbourne, Clevedon, Horne Bay, Llandrillo, and Pensarn.

[5th July, 1865.]

#### CAP. CXV.

An Act to amend the Naval Discipline Act, 1864.

[5th July, 1865.]

Sect. 1. *Amendment of act of 1864 as to minimum term of penal servitude.*

2. *Short title.*

Be it enacted &c., as follows:—

Sect. 1. With respect to any sentence of penal servitude passed after the passing of this act under the Naval Discipline Act, 1864, paragraph (4), of sect. 49 of that act, shall have effect as if the words "not less than five years" were substituted therein for the words "not less than three years."

2. The act may be cited as "The Naval Discipline Act Amendment Act, 1865."

#### CAP. CXVI.

An Act to explain the Foreign Jurisdiction Act.

[5th July, 1865.]

Sect. 1. *Meaning of "British colony" in the 6 & 7 Vict. c. 94.*

2. *Short title.*

Be it declared and enacted &c., as follows:—

Sect. 1. In the Foreign Jurisdiction Act (that is to say, the act of the session of the 6 & 7 Vict. c. 94, "to remove doubts as to the exercise of power and jurisdiction by her Majesty within divers countries and places out of her Majesty's dominions, and to render the same more effectual,") the term "British colony" includes, and shall be construed to include, any of her Majesty's possessions out of the United Kingdom.

2. This act may be cited as "The Foreign Jurisdiction Act Amendment Act, 1865."

#### CAP. CXVII.

An Act to regulate the Appointment of a Vicar or Incumbent to the Vicarage of the Parish Church of Rochdale, in the County of Lancaster, and in the Diocese of Manchester.

[5th July, 1865.]

#### CAP. CXVIII.

An Act to continue and amend the Peace Preservation (Ireland) Act, 1856.

[5th July, 1865.]

#### CAP. CXIX.

An Act for continuing various expiring Acts.

[5th July, 1865.]

Sect. 1. *Short title.*

2. *Continuance of acts in schedule.*

Whereas the several acts mentioned in the first column of the schedule hereto are wholly, or, as to certain provisions thereof, limited to expire at the times specified in respect of such acts in the fourth column of the said schedule: and whereas it is expedient to continue such acts, in so far as they are temporary in their duration, for the times mentioned in respect of such acts respectively in the fifth column of the said schedule: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Expiring Laws Continuance Act, 1865."

2. The acts mentioned in column 1 of the said schedule, and the acts, if any, amending the same, shall, in so far as such acts, or any provisions thereof, are temporary in their duration, be continued until the times respectively specified in respect of such acts in the fifth column of the said schedule.

## SCHEDULE.

1. <i>Original Acts.</i>	2. <i>Amending Acts.</i>	3. <i>How far temporary.</i>	4. <i>Time of Expiration of temporary Provisions.</i>	5. <i>Continued until</i>
3 & 4 Vict. c. 89. Poor Rates, Stock-in- Trade Exemption.	. . .	Whole Act . .	1st October, 1865, and end of then next session. (26 & 27 Vict. c. 95).	1st October, 1866, and end of then next ses- sion.
4 & 5 Vict. c. 59. Application of High- way Rates to Turn- pike Roads.	. . .	Whole Act . .	1st October, 1865, and end of then next session. (23 & 24 Vict. c. 67).	1st October, 1870, and end of then next ses- sion.
10 Vict. c. 32. Landed Property Im- provement (Ireland).	13 & 14 Vict. c. 31.	As to powers of Com- missioners.	1st January, 1866, and end of then next session. (26 & 27 Vict. c. 95).	1st January, 1866, and end of then next ses- sion.
10 & 11 Vict. c. 90. Poor Laws (Ireland).	14 & 15 Vict. c. 68.	As to appointment of Commissioners, &c.	23rd July, 1866, and end of then next session. (27 & 28 Vict. c. 84).	23rd July, 1866, and end of then next session.
10 & 11 Vict. c. 98. Ecclesiastical Juris- diction.	. . .	As to provisions con- tinued by 21 & 22 c. 50.	1st August, 1865, and end of then next session. (27 & 28 Vict. c. 84).	1st August, 1867, and end of then next session.
11 & 12 Vict. c. 32. County Cess (Ireland).	20 & 21 Vict. c. 7.	Whole Act . .	1st August, 1865, and end of then next session. (27 & 28 Vict. c. 84).	1st August, 1866, and end of then next session.
11 & 12 Vict. c. 107. Sheep and Cattle dis- eased.	16 & 17 Vict. c. 62.	Whole Act . .	1st August, 1865, and end of then next session. (27 & 28 Vict. c. 84).	1st August, 1866, and end of then next session.
14 & 15 Vict. c. 104. Episcopal and Capitu- lar Estates Ma- nagement.	17 & 18 Vict. c. 116. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124.	Whole Act . .	1st January, 1865, and end of then next session. (27 & 28 Vict. c. 84).	1st January, 1866, and end of then next session.
17 & 18 Vict. c. 117. Incumbered Estates (West Indies).	21 & 22 Vict. c. 96. 25 & 26 Vict. c. 45. 27 & 28 Vict. c. 108.	As to appointment of Commissioners.	2nd August, 1865. (27 & 28 Vict. c. 84).	2nd August, 1867, and end of then next session.
24 & 25 Vict. c. 109. Salmon Fishery (Eng- land) Act.	. . .	As to appointment of Inspectors, sect. 31.	1st October, 1865. (27 & 28 Vict. c. 84).	1st October, 1866, and end of then next session.
25 & 26 Vict. c. 97. Salmon Fisheries (Scotland) Act.	26 & 27 Vict. c. 50. 27 & 28 Vict. c. 118.	As to powers of Com- missioners, &c.	1st January, 1866 . .	1st January, 1867.
26 & 27 Vict. c. 114. Salmon Fisheries (Ire- land).	. . .	As to duration of office of the Special Com- missioners for Irish Fisheries, and all powers, rights, and privileges pertain- ing thereto.	28th July, 1865, and end of then next session.	28th July, 1866, and end of then next session.
17 & 28 Vict. c. 92. Public Schools.	. . .	Whole Act . .	1st August, 1865. . .	1st August, 1866.

## CAP. CXX.

An Act to amend the Acts relating to the Preservation and Improvement of Harwich Harbour. [5th July, 1865.]

## CAP. CXXI.

An Act to amend the Salmon Fishery Act, 1861. [5th July, 1865.]

- Sect. 1. Short title.
2. Construction of act.
3. Definition of terms.
4. Power to justices of county to apply for formation of fishery districts.
5. Limits of river and of fishery district, how settled.
6. Appointment of conservators to district within limits of one county.
7. Committee for fishery district in different counties.
8. Application for appointment of joint committee.
9. Appointment of fishery committee.
10. Notice of appointment of fishery committee.
11. Proceedings of joint fishery committee.
12. Meeting of joint fishery committee.
13. Dissolution of a joint fishery committee.
14. Ex officio members of board.
15. Tenure of office by conservators.
16. Notice of appointment of conservators.
17. Cesser of powers of existing conservators.
18. Rules as to objections and evidence.

19. Provision as to common estuary.
20. Alterations of fishery district.
21. Constitution of board of conservators.
22. Proceedings of board.
23. Appointment of committees.
24. Amendment of sect. 18 of Salmon Fishery Act, 1861.
25. Vacancies in board, and defect in qualification of members.
26. Evidence of proceedings at meeting.
27. Enumeration of powers of board of conservators.
28. Mortgage of license duties.
29. Audit of accounts of board.
30. Power of water bailiff for protection of fisheries.
31. Order for entry of water bailiff on land.
32. Alteration of fish pass or free gap.
33. Issue of licenses.
34. Rules as to licenses.
35. Penalty on fishing with rod without license.
36. Penalty on fishing at weirs or with nets without license.
37. Production of license.
38. County of city or county of town included under the term "county."
39. Amendment of provisions relating to fixed engines.
40. Commissioners to inquire as to fixed engines.
41. Certificate as to privileged engines.
42. Commissioners to inquire as to fishing weirs.
43. Notices of courts of commissioners.
44. Hearing as to legality of fixed engines.



45. Appeal from decision of special commissioners.
46. Appointment of commissioners under sign manual.
47. Commissioners to have a common seal.
48. Commissioners not to sit in Parliament.
49. Acts of the commissioners.
50. The Treasury to fix salaries, &c., and appoint additional officers.
51. Duration of office of commissioners.
52. Powers of commissioners.
53. Copies of orders of commissioners.
54. Penalty for false swearing.
55. Proceedings not to abate by death, &c.
56. Power in certain cases to award imprisonment with hard labour instead of penalty.
57. Minimum penalties.
58. Forfeiture of nets, &c.
59. Limit of time for compensation for fish pass.
60. Consent of conservators necessary for artificial propagation of salmon.
61. As to disqualification of justices.
62. Payment of penalties to conservators in certain cases.
63. River Esk within limits of act.
64. Partial application of Salmon Acts to trout in salmon rivers.
65. Provisions as to exportation of salmon.
66. Appeal to quarter sessions in case of summary conviction.

## CAP. CXXII.

An Act to amend the Law as to the Subscriptions and Declarations to be made, and Oaths to be taken, by the Clergy of the Established Church of England and Ireland.  
[5th July, 1865.]

- Sect. 1. *Declaration of assent.*  
 2. *Declaration against simony.*  
 3. *Stipendiary curate's declaration.*  
 4. *Subscription and oaths on ordination.*  
 5. *Subscription and oaths on institution to benefice or license to a perpetual curacy, &c.*  
 6. *Declaration on taking stipendiary curacy.*  
 7. *Declaration after institution or collation.*  
 8. *Declaration after license to stipendiary curacy.*  
 9. *No other declaration or oaths than those required by act to be enforced.*  
 10. *Declaration of assent to be substituted in case of other ecclesiastical appointments.*  
 11. *Oaths to be administered during ordination or consecration services.*  
 12. *Nothing to affect oath of canonical obedience to bishops, &c.*  
 13. *Extent of act.*  
 14. *Short title.*  
 15. *As to repeal of acts in schedule.*

Whereas it is expedient that the subscriptions, declarations, and oaths required to be made and taken by the clergy of the United Church of England and Ireland should be altered and simplified: be it enacted &c., as follows:—

Sect. 1. The following declaration is hereinafter referred to as "the declaration of assent:—

"I, A. B., do solemnly make the following declaration:—I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer, and of the ordering of bishops, priests, and deacons. I believe the doctrine of the United Church of England and Ireland, as therein set forth, to be agreeable to the Word of God; and in public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority."

2. The following declaration is hereinafter referred to as "the declaration against simony:—

"I, A. B., solemnly declare, that I have not made, by myself or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever which to the best of my knowledge or belief is simoniacal, touching or concerning the obtaining the preferment of —, nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract, or promise made by any other without my knowledge or consent."

3. The following declaration is hereinafter referred to as "the stipendiary curate's declaration:—

"I, A. B., incumbent of —, in the county of —, bona fide undertake to pay to C. D., of —, in the county of —, the annual sum of £—, as a stipend for his services as curate, and I, C. D., bona fide intend to receive the whole of the said stipend."

"And each of us, the said A. B. and C. D., declare that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe house; and that I, A. B., undertake to pay the same, and I, C. D., intend to receive the same, without any deduction or abatement whatsoever."

4. Every person about to be ordained priest or deacon shall, before ordination, in the presence of the archbishop or bishop by whom he is about to be ordained, at such time as he may appoint, make and subscribe the declaration of assent, and take and subscribe the oath of allegiance and supremacy according to the form set forth in the act of 21 & 22 Vict. c. 48.

5. Every person about to be instituted or collated to any benefice, or to be licensed to any perpetual curacy, lectureship, or preachship, shall, before institution or collation is made or license granted, make and subscribe the declaration of assent, and the declaration against simony, and take the said oath of allegiance and supremacy, in the presence of the archbishop or bishop by whom he is to be instituted, collated, or licensed, or the commissary of such archbishop or bishop.

6. Every person about to be licensed to a stipendiary curacy shall, before obtaining such license, present to the archbishop or bishop by whom the license is to be granted, the stipendiary curate's declaration, signed by himself and by the incumbent of the benefice to which he is about to be licensed.

7. Every person instituted or collated to any benefice with cure of souls, or licensed to a perpetual curacy, shall, on the first Lord's-day on which he officiates in the church of such benefice or perpetual curacy, or on such other Lord's-day as the ordinary may appoint and allow, publicly and openly, in the presence of the congregation there assembled, read the Thirty-nine Articles of Religion, and immediately after reading the same make the said declaration of assent, adding, after the words "Articles of Religion," in the said declaration, the words "which I have now read before you."

If any person instituted, collated, or licensed as aforesaid wilfully fails to comply with the provisions of this section, he shall absolutely forfeit his benefice or perpetual curacy, but no title to present by lapse shall accrue by any such forfeiture until the ordinary has given six months' notice thereof to the patron.

8. Every person licensed to a stipendiary curacy shall, in the presence of the archbishop or bishop by whom he was licensed, or of the commissary of such archbishop or bishop (unless, having been ordained on the same day, he has already made and subscribed the same), make and subscribe the declaration of assent, and on the first Lord's-day on which he officiates in the church or in one of the churches in which he is licensed to serve publicly, and openly make a declaration of assent in the presence of the congregation there assembled, and at the time of divine service.

If any person licensed to a stipendiary curacy wilfully fails to comply with the provisions of this section his license shall be void.

9. Subject as hereinafter mentioned, no person shall, on or as a consequence of ordination, or on or as a consequence of being licensed to any stipendiary curacy, or on or as a consequence of being presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preachship, be required to make any subscription or declaration, or take any oath, other than such subscriptions, declarations, and oaths as are required by this act.

10. On all occasions other than those hereinbefore provided for, on which any declaration or subscription with respect to the Thirty-nine Articles, or the Book of Common Prayer, or the Liturgy is required to be made by any person in holy orders appointed to any ecclesiastical dignity, benefice, or office, the making and subscribing the declaration of assent shall be substituted for the making any such declaration or subscription as aforesaid; and on all occasions other than those hereinbefore provided, on which any oath against simony is required to be taken, the making and subscribing the declaration against simony shall be substituted for the taking such oath.

11. No oath shall be administered during the service for the ordering of deacons, or during the service for the offering of priests, or during the service for the consecration of archbishops and bishops.

12. Nothing in this act contained shall extend to or affect the oath of canonical obedience to the bishop, or the oath of due obedience to the archbishop taken by bishops on consecration.

13. That this act do extend to the islands of Guernsey, Jersey, Alderney, and Sark, and to the Isle of Man.

14. This act may be cited for all purposes as "The Clerical Subscription Act, 1865."

15. The enactments described in the schedule hereto, and all enactments amending, confirming, or continuing the same, and all other enactments inconsistent with this act, are hereby repealed.

# SCHEDULE.

## ENACTMENTS REPEALED.

28 Hen. 8, c. 15 (Irish).—*The whole of sects. 9 and 10.*

1 Eliz. c. 1.—An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign Powers repugnant to the same.—*Sects. 19, 20, 21, 22, and 23, so far as they relate to any oath to be taken by a person who is ordained or licensed to a stipendiary curacy, or presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preacher'ship.*

2 Eliz. c. 1 (Irish).—An Act restoring to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign Power repugnant to the same.—*Sects. 7, 8, and 9, so far as they relate to any oath to be taken by a person who is ordained or licensed to a stipendiary curacy, or presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preacher'ship.*

13 Eliz. c. 12.—An Act for the Ministers of the Church to be of the sound Religion.—*The whole of sect. 3, except the words following:—"No person shall hereafter be admitted to any benefice with cure, except he then be of the age of three-and-twenty years at the least, and a deacon."*

*And so much of sect. 5 as provides that no one shall be admitted to the order of deacon or ministry unless he shall first subscribe to the said Articles.*

13 & 14 Car. 2, c. 4.—An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies, and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England.—*The whole of sects. 6, 8, and 11, and sect. 19, except the words following:—"No person shall be or be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship within this realm of England, or the dominion of Wales and town of Berwick-upon-Tweed, unless he be first approved and thereunto licensed by the archbishop of the province or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualities under his seal."*

17 & 18 Car. 2, c. 6 (Irish).—*The whole of sects. 3, 5, and 6, and sect. 18, except the words following:—"That no person shall be or be received as a lecturer, or permitted, suffered, or allowed to preach as a lecturer, or to preach or read any sermon or lecture in any church, chapel, or other place of public worship within this realm of Ireland, unless he be first approved and thereunto licensed by the archbishop of the province or bishop of the diocese, or (in case the see be void) by the guardian of the spiritualities under his seal."*

1 Will. & M. c. 2.—An Act for the abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths.—*The whole act, so far as relates to any oath to be taken by any person who is ordained or is licensed to a stipendiary curacy, or presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preacher'ship.*

8 Will. & M. c. 2.—An Act for the abrogating the Oath of Supremacy in Ireland, and appointing other Oaths.—*So much of sect. 4 as relates to persons admitted to any ecclesiastical office or employment.*

1 Geo. 1, st. 2, c. 13.—An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors.—*Sects. 2 and 7, so far as they relate to any oath to be taken by any person who is ordained or is licensed to a stipendiary curacy, or presented, instituted, collated, elected, or licensed to any benefice, perpetual curacy, lectureship, or preacher'ship.*

23 Geo. 2, c. 28.—*The whole act.*

1 & 2 Vict. c. 106.—*Part of sect. 81, beginning with the words "and in every case in which application shall be made," to the end of the section.*

## CAP. CXXIII.

An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year ending the 31st March, 1866, and to appropriate the Supplies granted in this Session of Parliament.

[6th July, 1865.]

## CAP. CXXIV.

An Act for consolidating certain Enactments relating to the Admiralty.

[8th July, 1865.]

Sect. 1. *Provisions of the 27 & 28 Vict. c. 57, to apply to this act.*

2. *Style of Commissioners of Admiralty in suits. As to costs.*

3. *Prerogatives of the Crown in suits preserved, &c.*

4. *Saving for proceeding by information, &c.*

5. *Superintendents of dockyards to be justices for certain purposes.*

6. *Punishment for uttering false petitions, certificate, &c.*

7. *Parts of the 24 & 25 Vict. c. 98, incorporated.*

8. *Punishment for personation of seamen, &c.*

9. *Saving for punishment under other acts, &c.*

10. *Commencement of act.*

11. *As to publication of Orders in Council.*

12. *Short title.*

Be it enacted &c., as follows:—

Sect. 1. The provisions of the Admiralty Lands and Works Act, 1804, respecting the user of lands, and respecting powers of management and leasing, and other rights and powers relative to lands, and respecting recovery of possession and sale of lands, and respecting actions and suits by and against the Admiralty relative to lands, shall apply in relation to all lands for the time being vested in, or purchased by, the Commissioners of the Admiralty.

2. Except as otherwise expressly provided, the Commissioners of the Admiralty for the time being may be styled, in any action, suit, or other proceeding at law or in equity, "The Commissioners for executing the Office of Lord High Admiral of the United Kingdom," without more; and any action, suit, or proceeding shall not be affected by any change among the Commissioners of the Admiralty; and in any action, suit, or proceeding the Commissioners of the Admiralty shall be liable and entitled to pay or receive costs according to the ordinary law and practice relative to costs.

3. Nothing in this act, or in the Admiralty Lands and Works Act, 1864, shall take away or abridge in any action or suit the legal rights, privileges, and prerogatives of her Majesty, her heirs and successors, but in all actions and suits instituted by or against the Commissioners of the Admiralty, and in all proceedings and matters connected therewith, the Commissioners of the Admiralty may exercise and enjoy all such rights, privileges, and prerogatives as are for the time being exercised and enjoyed in any action or suit in any court of law or equity by her Majesty, her heirs or successors, as if the Crown were actually a party to such action or suit.

4. Notwithstanding anything in this act, or in the Admiralty Lands and Works Act, 1864, it shall be lawful for her

\* The numbers of the sections correspond with the numbers in the ordinary edition of the statutes.

Majesty, her heirs and successors, to proceed by information in the Court of Exchequer, or by any other Crown process, legal or equitable, in any case in which it would have been competent for her Majesty, her heirs or successors, so to proceed, if no provisions respecting procedure had been inserted in this act, or in the Admiralty Lands and Works Act, 1864.

5. The superintendents of her Majesty's dockyards shall be in all places justices of the peace in respect of all offences specified in this act, and of all matters relating to her Majesty's naval service, and the stores, provisions, and accounts thereof.

6. If any person, in order to sustain any claim to any pay, wages, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half-pay, pension, or allowance from the Compassionate Fund of the Navy, or other money payable by the Admiralty, or to any effects or money in charge of the Admiralty, or in order to procure any person to be admitted a pensioner as the widow of an officer of the navy, does any of the following things, namely, offers or utters to any person in the service of the Crown or the Admiralty any false affidavit, knowing the same to be false, or makes or subscribes, or offers or utters, as aforesaid, any false written petition, application, statement, answer, certificate, or voucher, or other false writing, knowing the same to be false—every such person shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, or on summary conviction before a justice, sheriff, or magistrate shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour.

7. The following sections of the act of the session of the 24 & 25 Vict. (c. 98), "to consolidate and amend the Statute Law of England and Ireland relating to indictable Offences by Forgery," shall be incorporated with this act, and shall be read as if they were here re-enacted, namely—sects. 40 to 42 and 50 to 53 (all inclusive); and for this purpose the expression "this act," used in the said incorporated sections, shall be construed to include the present act, and expressions therein used relating to forgery or forged writings shall be construed to apply to any act being a misdemeanour under the last foregoing provision of this act, and to writings made, subscribed, offered, or uttered in contravention of that provision.

8. If any person, in order to receive any pay, wages, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half-pay, pension, or allowance from the Compassionate Fund of the Navy, payable or supposed to be payable by the Admiralty, or any other money so payable or supposed to be payable, or any effects or money in charge or supposed to be in charge of the Admiralty, falsely and deceitfully personates any person entitled or supposed to be entitled to receive the same, every such person shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, or on summary conviction before a justice, sheriff, or magistrate, shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour.

9. Nothing in this act shall prevent any person from being proceeded against and punished under any other act or at common law in respect of an offence (if any) punishable as well under this act as under any other act or at common law.

10. This act shall commence on such day, not later than the 1st January, 1866, as her Majesty in Council thinks fit to direct.

11. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and if not then within thirty days after the next meeting of Parliament.

12. This act may be cited as "The Admiralty Powers, &c. Act, 1865."

## CAP. CXXV.

## An Act for the Regulation of Dockyard Ports.

[6th July, 1865.]

1. Short title.
2. Interpretation of terms.
3. Power to define limits.
4. Appointment of Queen's harbour masters.
5. Fort regulations to be made by Orders in Council.
6. Penalties in such orders.
7. Orders in Council to be made as to lights, prevention of collision, &c., with concurrence of Board of Trade.
8. As to the printing and sale of orders.
9. Publication of orders.
10. Effect of order.
11. Power for Queen's harbour master to unmoor vessels, &c.
12. Power to search, &c.
13. Power to remove wreck, &c.
14. Power to remove unserviceable vessels.
15. Recovery of expenses of removal of wreck, &c.
16. Recovery of expenses by owner from master, &c.
17. Summary proceedings for penalties, &c.
18. Application of penalties.
19. Penalties, &c. may be raised by sale of vessel.
20. Service of summons.
21. Local jurisdiction.
22. Jurisdiction of justice of the peace.
23. Saving for right of property, &c.
24. Limitation of actions, &c.
25. Commencement of act.
26. Orders in Council to be laid before Houses of Parliament.

## CAP. CXXVI.

## An Act to consolidate and amend the Law relating to Prisons.

[6th July, 1865.]

1. Short title.
2. Commencement of act.
3. Application of act.
4. Definition of terms.
5. Description of "prison authorities."
6. Definition of "justices in sessions assembled."
7. Contracts, &c. by prison authority in counties.
8. Maintenance of prisons by separate prison jurisdiction.
9. Definition of separate prison jurisdiction.
10. Officers of prison.
11. Appointment of chaplain to two prisons.
12. Assistant chaplains and deputy gaoler.
13. Notice to be sent to bishop as to chaplains and assistant chaplains.
14. Tenure of office and salaries of prison officers.
15. Superannuation of officers.
16. Removal of prison officers from apartments.
17. Requisitions of act as to separation of prisoners.
18. Cells to be certified for confinement of prisoners.
19. Requisitions of act as to hard labour.
20. Regulations as to government of prisons.
21. Rules in addition to regulations in schedule.
22. Inspector of prisons to leave a minute of observation.
23. Power to build prisons.
24. Conditions as to building prisons.
25. Mode of obtaining sanction of Secretary of State to building of prisons.
26. Approval of Secretary of State.
27. Charge of borrowed moneys.
28. Certain clauses of the 10 & 11 Vict. c. 16, as to borrowing money, incorporated.
29. Public Works Loan Commissioners to lend money for building prisons.
30. Appointment of surveyor-general of prisons.
31. Contracts by prison authorities for maintenance of prisoners.
32. Expenses of contracts between prison authorities.
33. Appropriation of prisons for purposes of classification.
34. Public notice of prisons being appropriated to certain prisoners.
35. Government allowance withheld from inadequate prisons.

36. *Power of Secretary of State to close inadequate prisons.*
37. *Assisting prisoners to escape.*
38. *Punishment for carrying spirituous liquors or tobacco into prison.*
39. *Punishment for carrying letters into and out of prisons.*
40. *Notice of penalties to be placed outside of prison.*
41. *When term of imprisonment expires on Sunday, prisoner to be discharged on preceding day.*
42. *Allowance to discharged prisoner.*
43. *Discharged prisoners provided with means of returning to place of settlement.*
44. *Certain provisions of the 8 & 9 Vict. c. 18, incorporated.*
45. *Confirmation of title to lands purchased for purpose of prison.*
46. *Sale of unnecessary prisons.*
47. *Conditions of sale.*
48. *Inquests on prisoners.*
49. *General issue may be pleaded to action.*
50. *Venus whers laid.*
51. *Provision as to arbitration.*
52. *Recovery of penalties.*
53. *Appointment of visiting justices.*
54. *Power to make rules as to visiting justices.*
55. *Visits to prison by any justice.*
56. *Abolition of distinction between gaol and house of correction.*
57. *Jurisdiction over prison.*
58. *Custody of prisoners.*
59. *Security to sheriff.*
60. *Responsibility of sheriff.*
61. *Description of prison in writ.*
62. *Gaoler of prison to deliver calendar.*
63. *Removal of prisoners for trial.*
64. *Removal of prisoners in other cases.*
65. *Her Majesty may order prisoners to be removed from one prison to another.*
66. *Custody and trial of prisoners in a substituted prison.*
67. *Misdemeanants of first division.*
68. *Prohibition of committals to prisons in second schedule.*
69. *Removal of prisoners in scheduled prisons.*
70. *Expenses of prisoners confined in county prisons under act.*
71. *Power to use scheduled prisons as lock-up houses.*
72. *Power to allow compensation to persons deprived of office.*
73. *Acts and parts of acts in third schedule repealed.*
74. *No repeal hereby enacted to affect any order made, &c.*
75. *Certificates as to cells.*
76. *Saving as to repealed provisions referred to in other acts.*
77. *Saving as to meaning of Gaol Act, 25 & 26 Vict. c. 44.*
78. *Saving of rights of creditors.*
79. *Saving of superannuation allowances.*
80. *Saving as to rules.*
81. *Saving as to appointment of officers.*
82. *Saving as to commissions.*

Whereas it is expedient to consolidate and amend the law relating to prisons in England: be it enacted &c., as follows:—

#### Preliminary.

1. This act may be cited for all purposes as "The Prison Act, 1886."
2. This act shall come into operation on the 1st February, 1886, which day is hereinafter referred to as the commencement of the act.
3. This act shall not extend to Scotland or Ireland, and shall not apply to the prisons for convicts under the superintendence of the directors of convict prisons, or to any military or naval prison.
4. In this act, and in any act implied or incorporated by this act, the expressions hereinafter mentioned shall have the meanings hereinafter attached to them, unless there is some-

thing in the tenor of the act inconsistent with such meanings; that is to say—

- "Municipal borough" shall mean any place for the time being subject to the Municipal Corporation Act passed in the session of the 5 & 6 Will. 4, c. 76, and any acts amending the same, and "borough" shall include "municipal borough."
- "Prison" shall mean gaol, house of correction, bridewell, or penitentiary; it shall also include the airing grounds or other grounds or buildings occupied by prison officers for the use of the prison and contiguous thereto:
- "Gaoler" shall mean governor, keeper, or other chief officer of a prison:
- "Clerk of the peace" shall include any officer performing similar duties to those of a clerk of the peace:
- "Treasurer" shall include any officer performing duties similar to those of treasurer:
- "Quarter sessions" shall include "general sessions:"
- "Criminal prisoner" shall mean any prisoner charged with or convicted of a crime.
5. The persons hereinafter named shall be prison authorities for the purposes of this act; that is to say—
  - (1). As respects any prison belonging to any county, except as hereinafter mentioned, or to any riding, division, hundred, or liberty of a county, having a separate court of quarter sessions, the justices in quarter sessions assembled:
  - (2). As respects any prison belonging to a county divided into ridings or divisions, and maintained at the common expense of such ridings or divisions, the justices of the county assembled at a court of gaol sessions held in manner provided by the act of the 5 Geo. 4, c. 12:
  - (3). As respects any prison belonging to the city of London, or the liberties thereof, the court of the lord mayor and aldermen:
  - (4). As respects any prison belonging to a municipal borough, the council of the borough:
  - (5). As respects any prison belonging to any district, liberty, city, borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices, council, or other persons having power at law to build, enlarge, or repair such building, assembled at any gaol session or other formal meeting of their body.
6. The expression "justices in sessions assembled" shall mean as follows; that is to say—
  - (1). As respects any prison belonging to any county, except as hereinafter mentioned, or to any riding, division, hundred, or liberty of a county, having a separate court of quarter sessions, the justices in quarter sessions assembled:
  - (2). As respects any prison belonging to any county divided into ridings or divisions, and maintained at the common expense of such ridings or divisions, the justices of the county assembled at gaol sessions:
  - (3). As respects any prison belonging to the city of London, or the liberties thereof, the court of the lord mayor and aldermen:
  - (4). As respects any prison belonging to any municipal borough, the justices of the borough assembled at sessions to be held by them at the usual time of holding quarterly sessions of the peace, or at such other time as they may appoint:
  - (5). As respects any prison belonging to any city, district, borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices or other persons having power at law to make rules for the government of such prison.
7. The provisions of the act of the 21 & 22 Vict. c. 92, shall apply to all contracts, mortgages, or conveyances entered into or executed in pursuance of this act by or on behalf of, or with the justices of, any county, riding, division, hundred, or liberty of a county, in general or quarter sessions assembled; and in the construction of that act the expression "justices in quarter sessions assembled" shall include the justices of the county in gaol sessions assembled, in pursuance of the act of the 5 Geo. 4, c. 12, and shall also include the bailiff and justices of the liberty of Romney Marsh assembled at any session or meeting. And all contracts, mortgages, or conveyances entered into or executed in pursuance

of this act by or on behalf of, or with, any other prison authority shall be entered into and executed in manner in which such instruments or deeds are usually entered into by such authority.

#### PART I.—THE MAINTENANCE AND GOVERNMENT OF PRISONS.

##### *Obligation to maintain Prisons.*

8. There shall be provided, at the expense of every county, riding, division, hundred, liberty, franchise, borough, town, or other place having a separate prison jurisdiction, adequate accommodation for its prisoners in a prison or prisons constructed and regulated in such manner as to comply with the requisitions of this act in respect of prisons.

All expenses incurred by a prison authority in carrying into effect the provisions of this act shall be defrayed out of the county rate, or rate in the nature of a county rate, borough rate, or other rate leviable in the county, riding, division, hundred, liberty, franchise, borough, town, or other place having a separate prison jurisdiction, and applicable to the maintenance of a prison, or out of any other property applicable to that purpose.

9. For the purposes of this act every county, riding, division, hundred, liberty, franchise, borough, town, or other place shall be deemed to have a separate prison jurisdiction which maintains a separate prison, or would be liable at law to maintain a separate prison if accommodation were not provided for its prisoners in the prison of some other jurisdiction.

Where a county is divided into ridings or divisions, and a prison is maintained at the common expense of such ridings or divisions, that county shall, in relation to such prison, and for the purposes thereof, be deemed to have a separate prison jurisdiction, notwithstanding a separate county rate is not levied in such county at large.

##### *Appointment of Officers.*

10. There shall be appointed to every prison by the justices in sessions assembled,

A gaoler; a chaplain, being a clergyman of the Established Church; a surgeon, duly registered as such, under the act of the session of the 21 & 22 Vict. c. 90; and such subordinate officers as may be necessary.

And to every prison in which females are confined,

A matron, and such subordinate female officers as may be necessary.

Provided, that in a prison where females only are imprisoned, the matron shall be deemed to be the gaoler, and shall, so far as is practicable, perform all the duties, and be subject to all the obligations, of a gaoler in relation to such prison.

11. The same person may officiate as chaplain of any two prisons situate within a convenient distance from each other, if such prisons together are calculated to receive not more than 100 prisoners; but the chaplain of more than one prison, and the chaplain of any prison in which the average number of prisoners confined at any one time during the three years next before his appointment has not been less than 100, shall not, whilst holding his chaplaincy, hold any benefice with cure of souls or any curacy.

12. The justices in sessions assembled may appoint an assistant chaplain, being a clergyman of the Established Church, and a deputy gaoler, or either of such officers, to any prison which they deem sufficiently large to require the appointment of such officers, or either of them.

13. Notice of the nomination of a chaplain or assistant chaplain to a prison shall, within one month after it has taken place, be transmitted to the bishop of the diocese in which the prison is situate, and no chaplain or assistant chaplain shall officiate in any prison until he has obtained a license for that purpose from the bishop of the diocese wherein the prison is situate, nor for any longer time than while such license continues in force.

14. Every officer of a prison appointed under this act shall hold his office during the pleasure of the justices in sessions assembled, and shall receive such salary as they may direct, subject to this proviso, that in the case of a municipal borough the amount of the salary of every prison officer appointed under this act shall be approved by the council.

15. If any officer of a prison has been an officer of such prison for not less than twenty years, and is not less than sixty years of age, or becomes incapable, from confirmed

sickness, age, or infirmity, or injury received in actual execution of his duty, of executing his office in person, and such sickness, age, infirmity, or injury is certified by a medical certificate, and there shall be a report of the visiting justices testifying to his good conduct during his period of service, and recommending a grant to be made to him (such report to be made at some sessions of the justices holden not less than two months before the sessions at which the grant is made), the justices in sessions assembled may grant to such officer, having regard to his length of service, an annuity, by way of superannuation allowance, not exceeding two-thirds of his salary and emoluments, or a gratuity not exceeding the amount of his salary and emoluments for one year; any annuity or gratuity so fixed to be payable out of the rates lawfully applicable to the payment of the salaries of such officers. Where the power to levy the last-mentioned rates is vested in a different body from the justices, the consent of such last-mentioned body shall be obtained to the amount of superannuation allowed.

16. Whenever any officer of a prison is suspended, removed from, or resigns his office, or departs this life, the officer so suspended, removed, or resigning, and his family, and the family of every such deceased officer, shall quit the possession of the house or apartments in which he or they have previously resided by virtue of such office, when required so to do by notice under the hand or hands of two or more visiting justices or justices of the peace; and if he or they refuse or neglect to give such possession for forty-eight hours after such notice as aforesaid has been given to him or them, any two justices, upon proof made to them of such removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by warrant under their hands and seals, direct any constable, within a period therein named, to enter by force, if necessary, into such premises, and deliver possession thereof to the prison authority, or to any person appointed by the visiting justices.

##### *Discipline of Prisoners.*

17. The requisitions of this act with respect to the separation of prisoners are as follows:—

- (1) In every prison separate cells shall be provided, equal in number to the average of the greatest number of prisoners, not being convicts under sentence of penal servitude, who have been confined in such prison at any time during each of the preceding five years:
- (2) In every prison panishment cells shall be provided or appropriated for the confinement of prisoners for prison offences:
- (3) In a prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings, or separate parts of the same buildings, in such manner as to prevent their seeing, conversing, or holding any intercourse with the men:
- (4) In a prison where debtors are confined, means shall be provided for separating them altogether from the criminal prisoners:
- (5) In a prison where criminal prisoners are confined, such prisoners shall be prevented from holding any communication with each other, either by every prisoner being kept in a separate cell by day and by night, except when he is at chapel or taking exercise, or by every prisoner being confined by night to his cell, and being subjected to such superintendence during the day as will, consistently with the provisions of this act, prevent his communicating with any other prisoner.

18. No cell shall be used for the separate confinement of a prisoner unless it is certified by one of her Majesty's inspectors of prisons to be of such a size, and to be lighted, warmed, ventilated, and fitted up in such a manner as may be requisite for health, and furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison; but a distinction may be made in respect of the use of cells for the separate confinement of prisoners during long and short periods of imprisonment, and in respect of the use of cells in which the prisoner is intended to be employed during the whole day, or for a long or short part thereof; and the certificates of the inspector may be varied accordingly, so as to express the period of imprisonment for which

each cell may be considered fit, and the number of hours in the day during which the prisoners may be employed therein.

No punishment cell shall be used unless it is certified by such inspector that it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and that it can be used as a punishment cell without detriment to the prisoner's health, and the time for which it may be so used shall be stated in the certificate.

Every certified cell shall be distinguished by a number or mark placed in a conspicuous position, and shall be referred to by its number or mark in the certificate of the inspector, and if the number or mark of any certified cell is changed without the consent of the inspector, such cell shall be deemed to be an uncertified cell until a fresh certificate has been given.

Any certificate given by an inspector in respect of a cell may be withdrawn on such alteration taking place in such cell as to render the certificate, in his opinion, inapplicable thereto, and upon a certificate in respect of a cell being withdrawn that cell shall cease to be a certified cell for the purposes of this act.

If any prison authority feel aggrieved by the refusal of the inspector to certify a cell for any of the purposes of this act, it may appeal to one of her Majesty's Principal Secretaries of State, and his decision shall be final.

19. Hard labour for the purposes of this act shall be of two classes, consisting, first, of work at the tread wheel, shot drill, crank, capstan, stone-breaking, or such other like description of hard bodily labour as may be appointed by the justices in sessions assembled, with the approval of the Secretary of State, which work is hereinafter referred to as hard labour of the first class; secondly, of such other description of bodily labour as may be appointed by the justices in sessions assembled, with the approval of the Secretary of State, which work is hereinafter referred to as hard labour of the second class; and in every prison where prisoners sentenced to hard labour are confined, adequate means (having regard to the average number of such prisoners confined in that prison during the preceding five years) shall be provided for enforcing hard labour in accordance with the regulations of this act; and no prison shall be deemed to be in conformity with the regulations of this act with respect to the enforcement of hard labour unless such means as aforesaid have been provided therein, and prisoners sentenced to hard labour have been employed thereat in manner provided by this act: provided, that employment in the necessary services of the prison may, in the case of a limited number of prisoners, be selected by the visiting justices, as a reward for industry and good behaviour, be deemed to be hard labour of the second class.

20. The regulations contained in the first schedule hereto with respect to the government of prisons shall be binding on all persons in the same manner as if they were enacted in the body of this act.

21. The justices in sessions assembled shall make rules for the supply to all prisoners confined in prisons within their jurisdiction of a sufficient quantity of plain and wholesome food, regard being had so far as relates to convicted criminal prisoners to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto, and shall frame dietary tables for this purpose, and the said justices may make rules in respect of any other matters relating to the government of prisons within their jurisdiction, in addition to the regulations in the said first schedule, and may from time to time repeal or alter any rules made or dietary tables framed in pursuance of this section; but no rule or dietary table, or repeal or alteration of a rule or dietary table, shall be valid under this section until one of her Majesty's Principal Secretaries of State has certified his approval in writing under his hand; and when such approval has been certified, such rule or dietary table, or repeal or alteration of a rule or dietary table, shall be binding on all persons in the same manner as if it were enacted by this act. If the justices in sessions assembled make default in making rules and dietary tables that may be approved by the said Secretary of State in respect of the supply of food to prisoners in any prison within their jurisdiction, there shall be in force in such prison such rules or dietary tables with respect to such supply as may from time to time be determined by the said Secretary of State in writing under his hand.

22. Upon visiting or inspecting a prison to which this act applies, the inspector shall, by letter addressed to the visiting justices, call their attention to any irregularity he may have observed therein, or any complaint he may have to make against the buildings, the officers, or the discipline of the prison, and the visiting justices shall enter a copy of such letter in their minute book.

#### *Enlargement and Rebuilding of Prisons.*

23. Subject to the conditions hereinafter mentioned, any prison authority may alter, enlarge, or rebuild any of its prisons, or may, if necessary, build other prisons in lieu of or in addition to any subsisting prisons, and may borrow money for the purpose of such alteration, enlargement, new building, or building.

24. The necessity for any alteration or enlargement or for rebuilding of an existing prison, or for the building of a new prison, shall be proved, in the case of a municipal borough, by the certificate of the recorder, or chairman of quarter sessions where there is no recorder, and in any other case by a presentment of two or more of the visiting justices or other justices having jurisdiction within the district of the prison authority; and the consideration of such certificate or presentment shall not be entertained by the prison authority unless not less than three weeks previous notice has been given in one or more public newspaper or newspapers circulating within the district of the prison authority of their intention to take the same into consideration at the time and place to be mentioned in such notice, and in every case the sanction of one of her Majesty's Secretaries of State must be obtained to any such alteration, enlargement, rebuilding, or building.

25. In order to obtain the sanction of the Secretary of State to the alteration, enlargement, or rebuilding of any prison, the prison authority shall forward to him a plan of the proposed alterations, enlargement, or new building, drawn on such scale and accompanied with such particulars as the said Secretary may determine, and shall add thereto an estimate of the expense proposed to be incurred by the prison authority, and the amount of money proposed to be borrowed; and wherever a new prison is built, or an old prison is altered, enlarged, or rebuilt, a chapel or suitable room shall be provided easy of access to the prisoners, and shall be strictly set apart for religious worship, or for the religious and moral instruction of the prisoners, and shall not be employed for any other purpose.

26. The said Secretary of State may approve of the plans submitted to him with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified in writing under his hand.

27. Any moneys borrowed by a prison authority may be charged by that authority on any county rate or rate in the nature of a county rate, borough rate, or other rate applicable to the maintenance of a prison and leviable by that authority, or on any other property belonging to that authority and applicable to the same purpose as the said rates, and shall be repaid, together with the interest due thereon, out of such rates or other property.

28. The clauses of the Commissioners Clauses Act, 1847, with the exception of the 84th clause with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the commissioners" shall mean "the prison authority."

Where a prison authority borrows any money for the alteration, enlargement, or rebuilding of any prison, or the building of any new prison, they shall charge the rates or property out of which the moneys borrowed are payable not only with the interest of the moneys so borrowed, but also with the payment of such further sum as will ensure the repayment of the whole sum borrowed within thirty years, or if the loan has been made by the Public Works Loan Commissioners as defined by the Public Works Loan Act, 1853, within twenty years of the time of borrowing the same.

29. The said Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may advance to any prison authority upon the security of any rate applicable to or chargeable with the maintenance of a prison without any further security, for the purpose of altering, enlarging, or re-

building any subsisting prison or building any new prison in pursuance of this act, such sums of money as may be recommended by one of her Majesty's Principal Secretaries of State.

30. It shall be lawful for one of her Majesty's Principal Secretaries of State to appoint a proper person to be a surveyor-general of prisons for the purpose of advising prison authorities on the construction of prisons, and reporting to the Secretary of State on the several plans of prisons which may be sent to him for his report, and for the performance of such other duties connected with the construction of prisons as may be from time to time entrusted to him by the Secretary of State.

*Contracts for Maintenance of Prisoners and Appropriation of Prisons.*

31. Any prison authority may contract with any prison authority having a prison in conformity with the requisitions of this act, that the latter authority is to receive into and maintain in its prison or one of its prisons all prisoners maintainable at the expense of the former authority, or any particular class or classes of such prisons: provided—

That no such contract shall be valid unless the prison of the latter authority is approved by one of her Majesty's Principal Secretaries of State as being a fit prison to receive the prisoners contracted to be received there.

32. A contract entered into between prison authorities for the reception into and the maintenance in the prison of the one authority of the prisoners maintainable by the other authority may include the costs of conveying the prisoners to prison, and all other costs incurred in respect of such prisoners.

All moneys payable under the contract shall be raised in the same manner in which moneys for defraying the expenses of the prison for which a substitute is provided under the contract would be raiseable; and where such expenses are not by law wholly defrayable out of one fund, and a difference arises between the several persons interested in the several funds applicable to defraying such expenses as to what proportion ought to be applied to paying the expenses arising under the contract, such difference shall be settled by arbitration in manner hereinafter mentioned.

33. Where two or more prisons are within the jurisdiction of the same prison authority, that authority may carry into effect the requisitions of this act with respect to the separation of prisoners or the enforcement of hard labour by appropriating particular prisons to particular classes of prisoners.

34. Where a change has been made as to the prison to which prisoners committed within the jurisdiction of any prison authority may be sent by reason of such authority having appropriated any of its prisons to a particular class of prisoners, or having contracted with another prison authority for the reception of its prisoners, or from any other cause, notice of such change shall be published once at the least in each of two successive weeks in some newspaper or newspapers usually circulated within the jurisdiction of the same prison authority, and a copy thereof shall be served upon the gaoler of every prison within such jurisdiction.

*Penalty for inadequate Prisons.*

35. Whenever it appears to one of her Majesty's Principal Secretaries of State that default has been made in any prison in complying with the requisitions of this act in respect of the separation of prisoners or of the enforcement of hard labour, or of providing a chapel or suitable room for religious worship, it shall be lawful for the said Secretary of State to certify such non-compliance in writing under his hand to the Commissioners of her Majesty's Treasury, and upon such certificate being given no contribution shall thenceforth be paid out of moneys provided by Parliament towards the expenses of maintaining any prisoners in that prison until the said Secretary of State has revoked his certificate, upon being satisfied that the defaulting prison has been brought into conformity with the requisitions of this act, and then only from the date of such revocation:

Provided,—

1st. That this section shall not affect the payment of any contribution payable on or before the 31st December, 1866:

2nd. That before the certificate of the said Secretary of State is given under this section with respect to any

prison, a copy of the report of the inspector of prisons relating to that prison, and a statement of the grounds on which the said Secretary proposes to give his certificate, shall be sent to the prison authority; and it shall be lawful for such authority, upon receiving a copy of the said report and statement, to address any explanations or observations relating thereto to the said Secretary of State:

3rd. Whenever the certificate of the said Secretary of State is given under this section in respect of a prison, a copy of the said statement of grounds, accompanied with any such explanations or observations as aforesaid, shall be laid before Parliament.

36. If at any time it appear to one of her Majesty's Principal Secretaries of State that a prison authority has, in respect of any prison within its jurisdiction, made default for four successive years in complying with the requisitions of this act with respect to the separation of prisoners, or with respect to the enforcement of hard labour, or with respect to providing a chapel or suitable room for religious worship, the said Secretary of State may, by notice under his hand, addressed to the authority of that prison, and forwarded by post, in a prepaid letter, to the gaoler of the prison, or otherwise delivered to him, require that authority, within a time specified in such notice, to bring such prison into conformity with the requisitions of this act with respect to such matters as aforesaid, or to exercise the powers given to such authority by this act, of contracting for the removal of the whole or a number of its prisoners proportioned to the inadequacy of its prison in respect of such separation or means of providing such hard labour, to some other prison where means exist for carrying into effect the requisitions of this act with respect to the separation of prisoners or means of enforcing hard labour; and if any prison authority to whom such notice is given fail, within six months after the receipt thereof, to comply with the requirements thereby made, the said Secretary of State may order the said inadequate prison to be closed, and direct the removal of the prisoners therein, and the committal of future prisoners, to some other prison, the authority of which may be willing to receive them; and upon such order being made, it shall be the duty of the gaoler of the said inadequate prison, without further warrant, to remove all the prisoners therein to the substituted prison named in the order of the Secretary of State, and such substituted prison shall thenceforth, and so long as such order is in force, for all purposes relating to the committal, detention, trial, and punishment of the prisoners so removed, and of the prisoners committed thereto, in pursuance of this section, be deemed to be the prison of the defaulting authority, and that authority shall pay, out of any rates or moneys applicable to the support of the inadequate prison, all expenses incurred in and about the closing of that prison, and the removal of the prisoners therein to the substituted prison; and all expenses incurred by the authority of the substituted prison in respect of the prisoners committed to that prison in pursuance of this section shall be defrayed by the authority of the inadequate prison in the same manner in all respects as if that authority had contracted, in pursuance of this act, with the authority of the substituted prison for the reception in the last-mentioned prison of prisoners belonging to the authority of the inadequate prison.

Notice of any order made by the said Secretary of State in pursuance of this section shall be published in the London Gazette, and once at least, in two successive weeks, in one of the newspapers usually circulating in the county, city, borough, or place in which the prison to which the order relates is situate, and a copy of the Gazette or newspaper containing such order shall be conclusive evidence of its contents.

*Offences in relation to Prisons.*

37. Every person who aids any prisoner in escaping, or attempting to escape, from any prison, or who, with intent to facilitate the escape of any prisoner, conveys, or causes to be conveyed, into any prison any mask, dress, or other disguise, or any letter, or any other article or thing, shall be guilty of felony, and, on conviction, be sentenced to imprisonment, with hard labour, for a term not exceeding two years.

38. Every person who, contrary to the regulations of the prison, brings or attempts, by any means whatever, to introduce into any prison any spirituous or fermented liquor or tobacco, and every officer of a prison who suffers any spi-



rituous or fermented liquor or tobacco to be sold or used therein, contrary to the prison regulations, on conviction, shall be sentenced to imprisonment for a term not exceeding six months, or to a penalty not exceeding 20*l.*, or both in the discretion of the court; and every officer of a prison convicted under this section shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him.

39. Every person who, contrary to the regulations of a prison, conveys, or attempts to convey, any letter or other document, or any article whatever not allowed by such regulations, into or out of any prison, shall, on conviction, incur a penalty not exceeding 10*l.*, and, if an officer of the prison, shall forfeit his office and all arrears of salary due to him; but this section shall not apply in cases where the offender is liable to a more severe punishment under any other provision of this act.

40. The visiting justices shall cause to be affixed in a conspicuous place outside the prison a notice setting forth the penalties that will be incurred by persons committing any offence in contravention of the three preceding sections.

#### *Discharge of Prisoners.*

41. Any prisoner confined in a prison whose term of imprisonment would, according to his sentence, expire on the Lord's-day, shall be entitled to his discharge on the Saturday next preceding such Lord's-day; and every gaoler of every prison having the custody of any such prisoner as aforesaid is hereby required and authorised to discharge such prisoner on the Saturday next preceding any such Lord's-day.

42. Where any prisoner is discharged from prison, the visiting justices may order a sum of money not exceeding 2*l.* to be paid out of any moneys under their control, and applicable to the payment of the expenses of the prison, by the gaoler to the prisoner himself, or to the treasurer of a certified Prisoners' Aid Society, on his receiving from such society an undertaking in writing, signed by the secretary thereof, to apply the same for the benefit of the prisoner, or, if that becomes impossible, to appropriate the whole of any unapplied part thereof for the benefit of such other prisoner or prisoners discharged from the said prison as the visiting justices may direct.

43. When a prisoner is discharged from prison the visiting justices of the prison may provide such prisoner out of any moneys under their control, and applicable to the payment of the expenses of the prison, with the means of returning to his home or place of settlement, by causing his fare to be paid by railway, or in any other convenient manner.

#### *Purchase of Land.*

44. Any prison authority may purchase and hold such lands or easements relating to lands as they may require for the purposes of this act; and to facilitate such purposes, the Lands Clauses Consolidation Act, 1845, and the act amending the same, passed in the session of the 23 & 24 Vict. c. 106, shall be incorporated with this act, with the exceptions and subject to the conditions hereinafter contained; that is to say—

- (1). There shall not be incorporated with this act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned; that is to say, sect. 10, whereby it is provided, that the capital is to be subscribed before the compulsory powers are to be put in force; sect. 17, whereby it is provided that the certificate of the justices shall be evidence that the capital has been subscribed; the provisions relating to the entry upon lands by the promoters of the undertaking contained in sects. 84 to 91, both inclusive; sect. 123, whereby a limit of time for the compulsory purchase of land is imposed; or the provisions relating to access to the special act:
- (2). In the construction of this act and the said incorporated acts, this act shall be deemed to be the special act, and the prison authority shall be deemed to be the promoters of the undertaking, and the word "lands" shall include any easement in or out of the lands:
- (3). The prison authority shall not, except in respect of land contiguous to a prison, and required for the purpose of enlarging a prison, or rendering it more commodious or safe, put in force the provisions of

the said incorporated acts with respect to the purchase of land otherwise than by agreement.

45. When any lands have been purchased for the purposes of a prison in pursuance of this act, such lands shall, at the expiration of five years from the date of a conveyance having been made to any person or body corporate on trust for such purposes, absolutely vest in that person or body corporate for all the estate or interest purported to be conveyed, to be held on trust for the aforesaid purposes; and if before the expiration of the said term of five years any proceedings are taken on which judgment is obtained for the recovery of the possession of the said lands, then within two calendar months after judgment has been obtained there shall be paid to the person obtaining such judgment, instead of the delivery of possession of the lands, all costs incurred in obtaining such judgment and compensation for the full value of his estate or interest in such lands; the amount of such compensation to be ascertained in manner provided by the said Lands Clauses Consolidation Act, 1845, in case of disputed compensation as to land, and to be calculated on the basis of the value of the land at the time of the purchase thereof.

#### *Disposal of unnecessary Prisons.*

46. Any prison authority may sell any prison or land belonging to or held on trust for them as such prison authority, that appears to them to be unnecessary, by reason of their having provided for the accommodation of their prisoners, and the moneys arising from such sale shall be applied in discharging any expenses that may have been or may hereafter be incurred by such authority in building, altering, enlarging, or rebuilding any prison within their jurisdiction, or otherwise in aid of the rate raiseable for the maintenance of their prison.

47. No sale or purchase shall be made in pursuance of this act by a prison authority, unless not less than three weeks' previous notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority, of their intention to take into consideration the propriety of making such a sale or purchase at a time and place to be mentioned in such notice.

Any sale in pursuance of this act may be made by private contract or public auction, and subject to any special conditions as to title or other matters the vendors may think expedient. No purchaser shall be required to examine into the propriety of the sale of any prison or land in pursuance of this act, or into the appropriation of any moneys paid by him to the vendors; and any such sale shall, in the absence of actual fraud on his part, be valid so far as he is concerned, notwithstanding any omission to give such notice as aforesaid, or any other impropriety in the sale or misapplication of the purchase money.

#### *Miscellaneous.*

48. It shall be the duty of the coroner having jurisdiction in the place to which the prison belongs, to hold an inquest on the body of every prisoner who may die within the prison. Where it is practicable, one clear day shall intervene between the day of the death and the day of the holding the inquest; and in no case shall any officer of the prison, or any prisoner confined in the prison, be a juror on such inquest.

49. If any suit or action is prosecuted against any person for anything done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon, and that the same was done by authority of this act; and if a verdict passes for the defendant, or the plaintiff becomes nonsuited, or discontinues his action after issue joined, or if, upon demurrer or otherwise, judgment be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial takes place certifies his approbation of the action, and of the verdict obtained thereupon.

50. All actions, suits, and prosecutions commenced against any person for anything done in pursuance of this act, shall be laid and tried in the county or place where the act complained of was committed, and shall be commenced within six calendar months after the committal thereof, and not otherwise.

51. Any difference authorised or directed by this act to be settled by arbitration, shall be referred to the arbitration of a barrister-at-law to be appointed in writing, on the application of any party to the difference, by any judge of assize of the last preceding or of the next succeeding circuit; and all the provisions of the Common-law Procedure Act, 1854, relating to compulsory references, shall be deemed to extend to any such arbitration, with this addition, that it shall be obligatory on the arbitrator, at the request of any party to the difference, to state a special case for the opinion of a superior court.

52. Offences under this act, with the exception of felonies, and of offences for the mode of trial of which express provision is made by this act, shall be prosecuted summarily before two justices acting for the division or place where the matter requiring the cognisance of such justices arises, and in manner directed by the act of the 11 & 12 Vict. c. 43, and any act amending the same.

#### *Visiting Justices.*

53. The justices within every prison jurisdiction, in sessions assembled, shall, at their first sessions in each year, nominate two or more justices, with their consent, to be visitors of each prison within their jurisdiction, with power, if they think fit, to declare such nomination to be for the whole year, or to renew the same or make a fresh nomination in each succeeding quarter of the year; and one or more of the visiting justices so appointed shall from time to time visit and inspect each prison, and shall examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the requisitions of this act with respect to the separation of prisoners, and enforcement of hard labour in prisons, and shall further examine into the conduct of the respective officers, and the treatment and conduct of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison, and shall inquire into all abuses within the prison, and shall take cognisance of matters of pressing necessity, and within the powers of their commission as justices, and regulate the same, and shall once at least in each quarter of a year make a report to the justices in sessions assembled.

54. The justices in sessions assembled may make rules with respect to the duties of visiting justices, and from time to time repeal or alter any rule so made, and make other rules in addition thereto or in substitution therefor; but no rules shall be valid which are inconsistent with any provision of this act.

55. Any justice of the peace having jurisdiction in the place to which a prison belongs may, whenever he thinks fit, enter into and examine the condition of such prison, and of the prisoners therein, and he may enter any observations he may think fit to make in reference to the condition of the prison, or abuses therein, in the visitors book to be kept by the gaoler; and it shall be the duty of the gaoler to draw the attention of the visiting justices, at their next visit to the prison, to any entries made in the said book; but he shall not be entitled, in pursuance of this section, to visit any prisoner under sentence of death, or to communicate with any prisoner, except in reference to the treatment in prison of such prisoner, or to some complaint that such prisoner may make as to such treatment.

#### **PART II.—LAW OF PRISONS.**

56. Subject to the provisions of this act with respect to the appropriation of prisons to particular classes of prisoners, every prison to which this act applies shall be deemed to be a gaol and house of correction; but no class of prisoners that have not previously to the commencement of this act been confined in any prison, shall be confined there until one of her Majesty's Principal Secretaries of State has certified that such prison is a fit place of confinement for that class of prisoners.

57. Every prison, wheresoever situate, shall for all purposes be deemed to be within the limits of the place for which it is used as a prison.

58. Every prisoner confined in a prison shall be deemed to be in the legal custody of the gaoler, provided that nothing in this act contained shall affect the jurisdiction or responsibility of the sheriff in respect of prisoners under sentence of death, or his jurisdiction or control over the prison where

such prisoners are confined, and the officers thereof, so far as may be necessary for the purpose of carrying into effect the sentence of death, or for any purpose relating thereto; and in any prison in which sentence of death is required to be carried into effect on any prisoner, whether such prison is or not the common gaol of the county, the sheriff shall, for the purposes of carrying that sentence into execution, be deemed to have the same jurisdiction with respect to such prison as he has by law with respect to the common gaol of a county, or would have had if this act had not passed.

59. The gaoler of any prison in which debtors are confined shall give security to the sheriff for their safe custody, to such amount as may be determined by agreement, or, in default of agreement, may be settled by the justices in sessions assembled; and any such security may be given to the sheriff and his successors in office, and shall be deemed to ensure to the benefit of each succeeding sheriff in the same manner as if he were individually named therein.

60. The sheriff shall not be liable for the escape from imprisonment of any prisoner other than a debtor.

61. Any writ, warrant, or other legal instrument addressed to the gaoler of a particular prison, describing the prison by its situation or other definite description, shall be valid, by whatever title such prison is usually known, or whatever be the description of the prison, whether gaol, house of correction, bridewell, penitentiary, or otherwise.

62. The gaoler of every prison shall deliver or cause to be delivered to the judges of assize, and to the justices in quarter sessions, a calendar of all prisoners in custody for trial at such assizes or gaol sessions, in the same way as the sheriff of a county has hitherto been required by law to deliver a calendar of such prisoners when committed to the common gaol of the county, and the sheriff shall no longer be required to deliver or cause to be delivered such calendar.

63. A prisoner may be brought up for trial, and may be removed by or under the direction of the gaoler from one prison to another, or from one place of confinement to another, to which such prisoner may be legally removed, for the purpose of being tried or undergoing his sentence; and no prisoner whilst in the custody of a gaoler shall be deemed to have escaped, although he may be taken into different jurisdictions, or different places of confinement.

64. Prisoners may be removed from one prison to another prison or place of confinement within the jurisdiction of the same prison authority, or to the prison of any other authority, with the consent of such last-mentioned authority, by order of the justices in sessions assembled, for the purpose of enabling any prison to be altered, enlarged, or rebuilt, or in case of a contagious or infectious disease breaking out in any prison, or for any other reasonable cause; and in case of emergency such removal may be made in pursuance of an order under the hands of the visiting justices; and any prisoners removed from a prison in pursuance of this section may, by order of the justices in sessions assembled, be taken back by the gaoler to the prison from whence they were removed, or be removed to any other place in which they can legally be imprisoned.

65. It shall be lawful for her Majesty, by an order under the hand of one of her Majesty's Principal Secretaries of State, to direct any person in prison in England and Wales under sentence of any court, or of any competent authority, for any offence committed by him, to be removed from the prison in which he is confined to any other of her Majesty's prisons within England and Wales, there to be imprisoned during his term of imprisonment.

66. Where a prison authority, in this section called the contracting authority, has contracted with any other prison authority, in this section called the receiving authority, that the receiving authority is to receive into and maintain in its prison any prisoners maintainable at the expense of the contracting authority, the prison of the receiving authority shall for all the purposes of and incidental to the commitment, trial, detention, and punishment of the prisoners of the contracting authority, or any of such purposes, according to the tenor of the contract, be deemed to be the prison of the contracting authority, except that the contracting authority shall have no right to interfere in the management of the prison of the receiving authority.

67. In every prison to which this act applies prisoners convicted of misdemeanour, and not sentenced to hard labour, shall be divided into at least two divisions, one of which shall

called the first division; and whenever any person convicted of misdemeanour is sentenced to imprisonment without hard labour, it shall be lawful for the court or judge before whom such person has been tried to order, if such court or judge think fit, that such person shall be treated as a misdemeanant of the first division, and a misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of this act.

### PART III.—DISCONTINUANCE OF CERTAIN PRISONS.

68. After the commencement of this act no person shall be committed to any of the prisons mentioned in the second schedule hereto.

All persons who before the passing of this act might lawfully have been committed to any of the said scheduled prisons shall, after the passing thereof, be committed to the prison of the county in which the said scheduled prison is situated; and such county prison shall, for all purposes relating to or consequential on the committal, trial, detention, or punishment of prisoners committed or removed thereto in pursuance of this part of this act, be regarded in law as if it were the said scheduled prison.

In this part of this act, so far as it relates to the prison at Richmond in the said second schedule mentioned, "county" shall mean the North Riding of Yorkshire, and so far as relates to the prison at Rye, in the same schedule mentioned, the county gaol of Lewes shall be deemed to be the prison of the county.

69. As soon as conveniently may be after the commencement of this act the gaoler of each of the said scheduled prisons shall, without writ of habeas corpus or other writ for that purpose, remove every prisoner under sentence or committed for trial in such prison to the prison of the county in which the said scheduled prison is situate, and deliver such prisoner into the custody of the gaoler of the said county prison, together with the writ and other process under which the prisoner was arrested or confined; and the gaoler of the said county prison shall be bound to receive such prisoner, and shall give a receipt to the gaoler of the said scheduled prison for every prisoner removed in pursuance of this section.

70. The expenses which may be incurred by any county in the conveyance, transport, maintenance, safe custody, and care of every prisoner confined, in pursuance of this part of this act, in the county prison instead of in one of the said scheduled prisons, including the expenses of the removal of the prisoners from one prison to another, shall be defrayed in manner provided by law in cases where the prisoners committed for offences arising within any borough or other place that does not contribute to the county rate are sent to any prison of a county, and there is no special contract between such borough or other place and the county relative to such prisoners.

71. The prison authority of any of the said scheduled prisons may sell the same, in manner provided by this act, in case where a prison appears to a prison authority to be unnecessary, by reason of its having provided for the accommodation of its prisoners in some other adequate prison, or may, with the sanction of the said Secretary of State, cause the same to be used as a police-station house or a lock-up house, and the money arising from any sale made in pursuance of this section, shall be applied in discharging any expenses that may be incurred by such authority in the maintenance of its prisoners, or otherwise in aid of the rate applicable to prison purposes.

72. The justices in sessions assembled having jurisdiction over each of the said scheduled prisons, may allow such compensation or allowance as they think fit to any person who, by reason of the passing of this part of this act, is deprived of any salary or emoluments, so that no such compensation or allowance exceeds the proportion of the salary and emolument, if any, which might be granted under similar circumstances to a person in the civil service, under the acts for regulating such compensations or allowances for the time being in force; and any compensation or allowance so allowed shall be paid out of any rates applicable to the payment of the salaries of such officers, subject to this proviso, that when the power to levy such rates is vested in a different body from the justices, the consent of such last-mentioned body shall be obtained to the amount allowed.

### PART IV.—REPEAL OF STATUTES, AND SAVING CLAUSES.

73. After the commencement of this act, there shall be repealed the several acts specified in the third schedule hereto, to the extent in the said schedule mentioned.

74. No repeal hereby enacted shall affect—

- (1). Any order made, sentence passed, or other act or thing duly done under any acts hereby repealed:
- (2). Any right or privilege acquired, any security given, or other liability incurred under any act hereby repealed:
- (3). Any penalty, forfeiture, or other punishment incurred in respect of any offence against any act hereby repealed:
- (4). Any appointment to an office made under any act hereby repealed, or any power of removing the holder of such office, or otherwise dealing with such office as respects the existing holder thereof, in manner provided by any act hereby repealed:
- (5). The power of committing prisoners to any prison, except in so far as the same may be altered in pursuance of powers given by this act.

75. All cells certified before the commencement of this act by any inspector of prisons, as being fit to be used for the separate confinement of prisoners, shall be deemed to be cells certified for such purpose under this act.

76. Any unrepealed act of Parliament in which reference is made to the provisions of any act hereby repealed, shall be construed as if in such first-mentioned act reference had been made to the corresponding provisions of this act.

77. In the construction of the act of the 25 & 26 Vict. c. 44, the expression "the Gaol Act" shall mean this act instead of the act therein referred to.

78. Nothing in this act contained shall affect the right of any creditor who may have advanced any moneys for building, repairing, or otherwise for the purposes of any prison discontinued in pursuance of this act, or may have advanced any moneys on any mortgage or other security; and it shall be lawful for such creditor to pursue any remedies for recovering the principal or interest moneys due to him, and to enjoy the benefit of any security of which he may be possessed, in the same manner as if this act had not passed, and as if the acts hereby repealed had remained in full force.

79. Nothing in this act contained shall affect the tenure of office or salary or superannuation allowance of any officer of a prison, not being one of the said scheduled prisons, appointed prior to the commencement of this act, but such officer shall remain entitled to the same tenure of office, salary, and superannuation allowance as if this act had not passed: provided that the superannuation allowance of any prison officer appointed before the commencement of this act may, on the application of such officer, and with the consent of the justices in sessions assembled, be calculated on the same scale on which the superannuation allowances of officers appointed after the passing of this act are directed to be calculated.

80. All rules in force in any prison that are inconsistent with this act, or the regulations in the schedule hereto, shall be repealed from and after the commencement of this act, but all other rules in force in any prison shall so continue until altered in manner in this act provided.

81. Nothing in this act contained shall affect any right vested by act of Parliament or charter in the council of any municipal borough, of appointing a gaoler, chaplain, or other officer to the prison of such borough.

82. Nothing in this act contained relating to the custody of prisoners shall affect the validity of any commission of gaol delivery, commission of oyer and terminer, or other commission, precept, writ, warrant, or other document, notwithstanding the same may be addressed to or make mention of the sheriff of any county, city, or place, instead of being addressed to or making mention of the gaoler of a prison or prisons; and every such commission, precept, writ, warrant, or other document shall be obeyed by the gaoler, and take effect in the same manner as if the gaoler had been named therein instead of the sheriff.

## SCHEDULE I.

## REGULATIONS FOR GOVERNMENT OF PRISONS.

*General.*

1. The prison shall be kept in a cleanly state, and the walls and ceilings of the wards, cells, rooms, and passages used by the prisoners throughout every prison shall either be painted with oil, or be limewashed, or partly painted and partly limewashed. Where painted with oil, the painting shall be washed with hot water and soap once at least in every six months. Where limewashed, the limewashing shall be renewed once at least in every year. The day rooms, work rooms, passages, and sleeping cells shall be washed or cleansed once a week, or oftener, if requisite.

2. No thing shall be allowed to grow against the outer walls of the prison, nor any rubbish or other articles to be laid against them, nor shall any tools or implements of any kind likely to facilitate escape be left unnecessarily exposed.

3. Thermometers shall be placed in different parts of the prison.

4. No person shall be permitted to sleep in the apartments of any subordinate officer of the prison without permission from the gaoler, such permission to be reported to a visiting justice.

5. A report shall be made to the gaoler at ten o'clock each night whether the officers resident in the prison are all present; and no ingress or egress shall be allowed into or out of the prison between the hours of ten o'clock at night and six o'clock in the morning, except to the gaoler and his family, the chaplain, or surgeon, or in special cases, which shall be entered in the journal of the gaoler.

*Admission and Discharge of Prisoners.*

6. Prisoners on admission shall be searched, and all dangerous weapons, articles calculated to facilitate escape, and prohibited articles, shall be taken from them.

7. No prisoner shall be searched in the presence of any other prisoner.

8. All money or other effects brought into the prison by any prisoner, or sent to the prison for his use, which he is not allowed to retain, shall be placed in the custody of the gaoler, who shall keep an inventory of them in a separate book.

9. The name, age, height, weight, features, particular marks, and general appearance of a criminal prisoner shall, upon his admission, be noted in a nominal record of prisoners, to be kept by the gaoler. Every criminal prisoner shall also, as soon as possible, be examined by the surgeon, who shall enter in a book to be kept by the gaoler a record of the state of health of the prisoner, and any observations he may deem it expedient to add.

10. All prisoners, previously to being removed to any other prison, or being discharged from prison, shall be examined by the surgeon; and no prisoner shall be removed to any other prison unless the surgeon certifies, by an entry in the nominal record, that the prisoner is free from any illness that renders him unfit for removal; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner require to be discharged.

11. Prisoners before trial shall be kept apart from convicted prisoners.

12. Female prisoners shall be searched on admission by female officers. In other respects the same course shall be pursued in reference to the admission, removal, or discharge of a female prisoner as in the case of a male prisoner, the matron performing the duties imposed on the gaoler in case of a male prisoner.

*Food, Clothing, and Bedding of Prisoners.*

13. No tap shall be kept in any prison; nor shall spirituous liquors of any kind be admitted for the use of any of the prisoners therein, under any pretence whatever, unless by a written order of the surgeon, specifying the quantity to be admitted, and the name of the prisoner for whose use it is intended; but this regulation shall not apply to any stock of spirituous liquors kept in the prison for the use of the infirmary, and under the control of the surgeon.

14. No smoking shall be allowed, or tobacco introduced,

except with the consent and subject to the rules made by the visiting justices, or under a written order of the surgeon.

15. Any order by the surgeon for the admission of spirituous liquors or tobacco shall be entered by him in his journal.

16. A debtor shall be permitted to maintain himself, and to procure or receive at proper hours food, wine, malt liquor, clothing, bedding, or other necessities, but subject to examination, and to such rules as may be approved by the visiting justices.

17. No part of any food, wine, malt liquor, clothing, bedding, or other necessities belonging to any debtor shall be sold to any other prisoner; and any debtor transgressing this regulation shall lose the privilege of receiving or purchasing any wine or malt liquor for such a time as the visiting justices may deem proper.

18. A debtor, if unable to provide himself with sufficient food, clothing, bedding, or other necessities, shall receive the allowance of food, clothing, bedding, or other necessities, allotted to debtors unable to maintain themselves by the prison rules for the time being in force.

19. A criminal prisoner before trial may procure for himself, or receive at proper hours, food, and malt liquor, clothing, bedding, or other necessities, subject to examination, and to such rules as may be approved by the visiting justices; and any articles so procured may be paid for out of the moneys belonging to such prisoner in the hands of the gaoler. No part of such food, malt liquor, bedding, clothing, or other necessities shall be sold or transferred to any other prisoner; and any prisoner transgressing this regulation shall be prohibited from procuring any food or other necessities for such time as the visiting justices may deem proper. If a criminal prisoner before trial does not provide himself with food, he shall receive the allowance of food allotted to criminal prisoners before trial by the rules of the prison.

20. Criminal prisoners before trial may, if they desire it, wear the prison dress, and they shall be required to do so if their own clothes are insufficient or unfit for use, or necessary to be preserved for the purposes of justice. The prison dress for prisoners before trial shall be of a different colour from that of convicted prisoners.

21. Every convicted criminal prisoner shall be allowed a sufficient quantity of food according to the scale established by the rules of the prison. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. Care shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as may be made by the prison rules.

22. No convicted criminal prisoner shall be allowed any wine, beer, or other fermented liquor, except under a written order from the surgeon, to be entered in his journal, specifying the quantity and the name of the prisoner for whose use it is intended, or shall receive any food, clothing, bedding, or necessities other than the prison allowance, except under special circumstances, to be judged of by one or more of the visiting justices, and to be reported to the prison authority.

23. A convicted criminal prisoner shall be provided with a complete prison dress, and shall be required to wear it.

24. On the discharge of a prisoner his own clothes shall be returned to him, unless it has been found necessary to destroy them, in which case he shall be provided with clothing.

25. If necessary, the clothes of a prisoner shall be purified before he is allowed to wear them in the prison, or to take them on his discharge.

26. Every male prisoner shall sleep in a cell by himself, or, under special circumstances, in a separate bed, placed in a cell containing not fewer than two other male prisoners, and sufficient bed clothes shall be provided for every prisoner. A convicted criminal prisoner may be required to sleep on a plank bed without a mattress during such time as may be determined by the rules of the prison. Epileptic prisoners, or prisoners labouring under diseases requiring assistance or supervision in the night, may at any time, notwithstanding this regulation, be placed by order of the surgeon with not fewer than two other male prisoners.

27. The bed clothes shall be aired, changed, and washed as often as the surgeon or the visiting justices may direct.

*Personal Cleanliness.*

28. Prisoners shall be required to keep themselves clean and decent in their persons, and to conform to such rules as may be laid down for that purpose.

29. The hair of a female prisoner shall not be cut without her consent, except on account of vermin or dirt, or when the surgeon deems it requisite on the ground of health; and the hair of male criminal prisoners shall not be cut closer than may be necessary for purposes of health and cleanliness.

*Employment of Prisoners.*

30. No gaming shall be permitted in any prison, and the gaoler shall seize and destroy all dice, cards, or other instruments of gaming.

31. Debtors may be permitted to work and follow their respective trades and professions, provided their employment does not interfere with the regulations of the prison; and such debtors as find their own implements, and are not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the expense of the prison, shall be subject to a deduction, to be determined by the visiting justices, for the use of implements and the cost of maintenance.

32. Criminal prisoners before trial shall have the option of employment, but shall not be compelled to perform any hard labour.

33. On the acquittal of any criminal prisoner, or when no bill of indictment is found against him, such an allowance on account of his earnings, if any, shall be paid to such prisoner on his discharge as the visiting justices may think reasonable.

34. Every male prisoner of sixteen years of age and upwards, sentenced to hard labour, shall, during the whole of his sentence where it does not exceed three months, and during the first three months of his sentence where it exceeds three months, be kept at hard labour of the first class for such number of hours, not more than ten or less than six (exclusive of meals), as may be prescribed by the visiting justices; and during the remainder of his sentence shall be kept in like manner at hard labour of the first class, except where during such remainder of his sentence the visiting justices substitute hard labour of the second class for hard labour of the first class; provided that if the surgeon certifies any such prisoner to be unfit to be kept at hard labour of the first class during the whole or any part of the prescribed hours, such prisoner shall, during such whole or part of the prescribed hours, be kept at hard labour of the second class, unless the surgeon certifies that such prisoner is unfit to be kept at either class of hard labour during the whole or any part of such hours; provided that prisoners sentenced to hard labour for periods not exceeding fourteen days may, in pursuance of rules made by the justices in sessions, be kept in separate confinement at hard labour of the second class during the whole period of their sentences.

35. Every male prisoner under the age of sixteen years, sentenced to hard labour, and every female prisoner sentenced to hard labour, shall be kept at hard labour of the second class during such number of hours not more than ten or less than six (exclusive of meals) in each day as may be prescribed by the visiting justices, unless the surgeon certifies that he or she is unfit for hard labour.

36. No prisoner shall be employed at hard labour on Sundays, Christmas-day, Good Friday, and days appointed for public fasts or thanksgivings.

37. The surgeon shall from time to time examine the prisoners sentenced to hard labour during the time of their being so employed, and shall enter into his journal the name of any prisoner whose health he thinks to be endangered by a continuance at hard labour of either class, and thereupon such prisoner shall not again be employed at such class of hard labour until the surgeon certifies that he is fit for such employment.

38. Provision shall be made by the visiting justices for the employment of all convicted criminal prisoners not sentenced to hard labour. The visiting justices shall make rules as to the amount and nature of such employment, but no prisoner not sentenced to hard labour shall be punished for neglect of work, excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such prisoners.

*Health of Prisoners.*

39. Debtors shall have the means of daily taking exercise in the open air.

40. Criminal prisoners, if employed at work in their own cells, shall be permitted to take such exercise in the open air as the surgeon may deem necessary for their health.

41. The names of the prisoners who desire to see the surgeon, or appear out of health, shall be reported by the officer attending them to the gaoler, and by him without delay to the surgeon.

42. All directions given by the surgeon in relation to any prisoner, with the exception of orders for the supply of medicines or directions in relation to such matters as are carried into effect by the surgeon himself or under his superintendence, shall be entered day by day in his journal, which shall have a separate column in which entries are to be made by the gaoler, stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the gaoler may think fit to make, and the date of the entry.

43. In every prison an infirmary or proper place for the reception of sick prisoners shall be provided.

*Religious Instruction.*

44. In every prison where there is no chapel a suitable room shall be set apart for the purposes of the chapel.

45. Prayers to be selected by the chaplain from the Liturgy of the Established Church shall be read daily by the chaplain, gaoler, or such other person as may be appointed by the visiting justices, and at such time or times as may be fixed by them, and portions of the scriptures shall be read to the prisoners, when assembled for religious instruction, by the chaplain, or by such person, with the consent of the visiting justices, as he may appoint.

46. The chaplain shall on every Sunday, and on Christmas-day and Good Friday, perform the appointed morning and evening services of the Established Church, and preach at such time or times as shall be fixed by him, with the approval of the visiting justices. He shall give religious and moral instruction to the prisoners who are willing to receive it. He shall administer the Holy Sacrament of the Lord's Supper on suitable occasions to such prisoners as shall be desirous, and as he may deem to be in a proper frame of mind to receive the same. He shall frequently visit every room and cell of the prison occupied by prisoners, and shall direct such books to be distributed and read, and such lessons to be taught, in the prison as he may deem proper for the religious instruction of the prisoners. Criminal prisoners shall attend divine service on Sundays, and on other days when such service is performed, unless prevented by illness or other reasonable cause, to be allowed by the gaoler, or unless their attendance is dispensed with by the visiting justices; this regulation shall not apply to any prisoner who is attended or visited by a minister of a church or persuasion differing from the Established Church; and no prisoner shall be compelled to attend any religious service held or performed, or any religious instruction given, by the chaplain, minister, or religious instructor of a church or persuasion to which the prisoner does not belong.

47. If any prisoner is of a religious persuasion differing from that of the Established Church, and no minister has been appointed to attend at the prison on the prisoners of that persuasion, the visiting justices shall permit a minister of such persuasion to be approved by them to visit such prisoner at proper and reasonable times, under such restrictions as may be imposed by the visiting justices to guard against the introduction of improper persons and prevent improper communications, unless such prisoner expressly objects to see such minister.

48. No books or printed papers shall be admitted into any prison for the use of the prisoners, except by permission of the visiting justices; and no books or printed papers intended for the religious instruction of prisoners belonging to the Established Church shall be admitted but those chosen by the chaplain; provided that in case there may be a difference of opinion between the chaplain and visiting justices with respect to books or papers proposed to be admitted for the religious instruction of a prisoner belonging to the Established Church, reference shall be had to the bishop of the diocese, whose decision shall be final; and subject to such permission of the visiting justices as aforesaid, all books or printed papers

admitted into any prison for the religious instruction of prisoners belonging to any other persuasion, and who are visited by a minister of such persuasion, shall be approved by such minister; and the gaoler shall keep a catalogue of all books and printed papers admitted into the prison.

49. The chaplain shall communicate to the gaoler any abuse or impropriety in the prison which may come to his knowledge, and shall enter the same in his journal.

50. Where an assistant chaplain is appointed to a prison, he shall be competent to perform any duty required by law to be performed by the chaplain, and when either of them, the chaplain or assistant chaplain, is absent from the prison, the other shall take his duties. Where there is no assistant chaplain, or in case of the services of the assistant chaplain not being available by reason of sickness or other unavoidable cause, the chaplain shall, when absent from the prison on leave or from any unavoidable cause, appoint, with the consent of the visiting justices, a substitute, and insert his name and residence in his journal. In the event of any sudden cause preventing the chaplain, or, in the absence of the chaplain, the assistant chaplain, from performing his duties, he may accept the assistance of a clergyman of the Established Church in the performance of divine service in the chapel, inserting the fact, and the name of such clergyman, in his journal.

51. A minister appointed under the Prison Ministers Act, 1863, may, when absent on leave, or from any unavoidable cause, appoint a substitute with the consent of the visiting justices.

52. In the event of the death of any chaplain or assistant chaplain of a prison, or of a minister appointed under the Prison Ministers Act, 1863, the visiting justices shall provide a substitute until the next meeting of the justices in sessions.

#### *Instruction.*

53. Provision shall be made in every prison for the instruction of prisoners in reading, writing, and arithmetic during such hours and to such extent as to the visiting justices may seem expedient, provided that such hours shall not be deducted from the hours prescribed for hard labour.

#### *Visits to and Communications with Prisoners.*

54. Due provision shall be made for the admission, at proper times and under proper restrictions, of persons with whom prisoners before trial may desire to communicate, care being taken that, so far as is consistent with the interests of justice, such prisoners shall see their legal advisers alone; such rules also shall be made by the justices in sessions assembled for the admission of the friends of convicted prisoners as they may deem expedient; the justices shall also impose such restrictions upon the communication and correspondence of prisoners with their friends as they judge necessary for the maintenance of good order and discipline in such prison.

55. The gaoler may demand the name and address of any visitor to a prisoner; and when he has any ground for suspicion may search or cause to be searched male visitors, and may direct the matron or some other female officer to search female visitors, such search not to be in the presence of any prisoner or of another visitor; and in case of any visitor refusing to be searched, the gaoler may deny him or her admission; the grounds of such proceeding, with the particulars thereof, to be entered in his journal.

#### *Prison Offences.*

56. No punishments or privations of any kind shall be awarded, except by the gaoler, or by a visiting or other justice.

57. The gaoler shall have power to hear complaints respecting any of the offences following; that is to say,

- (1). Disobedience of the regulations of the prison by any prisoner:
- (2). Common assaults by one prisoner on another:
- (3). Profane cursing and swearing by any prisoner:
- (4). Indecent behaviour by any prisoner:
- (5). Irreverent behaviour at chapel by any prisoner:
- (6). Insulting or threatening language by any prisoner to any officer or prisoner:
- (7). Absence from chapel without leave by any criminal prisoner:
- (8). Idleness or negligence at work by any convicted criminal prisoner:

(9). Wilful mismanagement of work by any convicted criminal prisoner.

All the above acts are declared to be offences against prison discipline; and it shall be lawful for the gaoler to examine any person touching such offences, and to determine thereupon, and to punish such offences by ordering any offender, for any time not exceeding three days, to close confinement, to be kept there upon bread and water. And the gaoler shall enter in a separate book, called the punishment book, a statement of the nature of any offence that he has punished in pursuance of this regulation, with the addition of the name of the offender, the date of the offence, and the amount of punishment inflicted.

58. If any criminal prisoner is guilty of repeated offences against prison discipline, or is guilty of any offence against prison discipline which the gaoler is not by this act empowered to punish, the gaoler shall report the same to the visiting justices, or one of them; and any one of such justices, or any other justice having jurisdiction in the place to which the prison belongs, shall have power to inquire upon oath and to determine concerning any matter so reported to him, and to order the offender to be punished by confinement in a penalment cell for any term not exceeding one month, or, in the case of prisoners convicted of felony or sentenced to hard labour, by personal correction.

59. No prisoner shall be put in irons or under mechanical restraint by the gaoler of any prison, except in case of urgent necessity; and the particulars of every such case shall be forthwith entered in the gaoler's journal, and notice forthwith given thereof to one of the visiting justices; and no prisoner shall be kept in irons or under mechanical restraint for more than twenty-four hours without an order in writing from a visiting justice, specifying the cause thereof, and the time during which the prisoner is to be kept in irons or under mechanical restraint, which order shall be preserved by the gaoler as his warrant.

60. All corporal punishments within the prison shall be attended by the gaoler and the surgeon. The surgeon shall give such orders for preventing injury to health as he may deem necessary, and it shall be the duty of the gaoler to carry them into effect; and the gaoler shall enter in the punishment book the hour at which the punishment is inflicted, the number of lashes, and any orders which the surgeon may have given on the occasion.

#### *Prisoners under Sentence of Death.*

61. Every prisoner under warrant or order for execution shall, immediately on his arrival in the prison after sentence, be searched by or by the orders of the gaoler, and all articles shall be taken from him which the gaoler deems dangerous or inexpedient to leave in his possession. He shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the constant charge of an officer. He shall be allowed such a dietary and amount of exercise as the gaoler, with the approval of the visiting justices, may direct. The chaplain shall have free access to every such prisoner, unless the prisoner be of a religious persuasion differing from that of the Established Church, and be visited by a minister of such persuasion, in which case the minister of such persuasion shall have free access to him. With the above exceptions, no person, not being a visiting justice or an officer of the prison, shall have access to the prisoner except in pursuance of an order from a visiting justice.

During the preparation for an execution, and the time of the execution, no person shall enter into the prison who is not legally entitled to do so, unless in pursuance of an order in writing from two or more visiting justices.

#### *Prison Officers.*

62. No prisoner shall be employed as turnkey, assistant turnkey, wardaman, yardaman, overseer, monitor, or schoolmaster, or in the discipline of the prison, or in the service of any officer thereof, or in the service or instruction of any other prisoner. But this regulation shall not be taken to prevent the employment of any debtor in that part of the prison in which he may be lawfully confined in any manner in which he may be willing to be employed, and which is consistent with his safe custody.

63. Every prison officer, while acting as such, shall, by virtue of his appointment, and without being sworn in before



any justice, be deemed to be a constable, and to have all such powers, authorities, protection, and privileges, for the purpose of the execution of his duty as a prison officer, as any constable duly appointed has within his constableness by common law, statute, or custom.

64. No officer of a prison shall sell or let to, nor shall any person in trust for or employed by him sell or let to, or derive any benefit from the selling or letting of any article to, any prisoner.

65. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison.

66. No officer of a prison shall at any time receive money, fee, or gratuity of any kind, for the admission of any visitors to the prison or to prisoners, or from or on behalf of any prisoner, on any pretext whatever.

67. Female prisoners shall in all cases be attended by female officers.

#### *Gaoler.*

68. The gaoler shall reside in the prison. He shall not be an undersheriff or bailiff, or be concerned in any other employment.

69. The gaoler shall strictly conform to the law relating to prisons and to the prison regulations, and shall be responsible for the due observance of them by others. He shall observe the conduct of the prison officers, and enforce on each of them the due execution of his duties, and shall not permit any subordinate officer to be employed in any private capacity, either for any other officer of the prison, or for any prisoner.

70. The gaoler shall, in case of misconduct, have power to suspend any subordinate officer, and shall report the particulars without delay to a visiting justice.

71. The gaoler shall, as far as practicable, visit the whole of the prison, and see every male prisoner once at least in every twenty-four hours, and in default of such daily visits and inspections, he shall state in his journal how far he has omitted them, and the cause thereof. He shall, at least once during the week, go through the prison at an uncertain hour of the night, which visit, with the hour and state of the prison at the time, he shall record in his journal. When visiting the females' prison, he shall be attended by the matron or some other female officer.

72. The gaoler shall cause an abstract, to be approved by the Secretary of State, of the regulations relating to the treatment and conduct of prisoners, with a copy of the prison dietaries (printed in legible characters), to be posted in each cell, and shall read, or cause the same to be read, to every prisoner who cannot read, within twenty-four hours after his admission.

73. The gaoler shall without delay call the attention of the surgeon to any prisoner whose state of mind or body appears to require attention, and shall carry into effect the written directions of the surgeon respecting alterations of the discipline or treatment of any such prisoner.

74. The gaoler shall notify to the surgeon without delay the illness of any prisoner, and shall deliver to him daily a list of such prisoners as complain of illness, or are removed to the infirmary, or confined to their cells by illness, and he shall daily deliver to the chaplain and surgeon lists of such prisoners as are confined in punishment cells.

75. Upon the death of a prisoner, the gaoler shall give immediate notice thereof to the coroner of the district to which the prison belongs, and to one of the visiting justices, as well as to the nearest relative of the deceased, where practicable.

76. The gaoler shall without delay report to the visiting justices any case of insanity or apparent insanity occurring among the prisoners.

77. The gaoler shall keep the following records and accounts:—

- (1). The register required by the Prison Ministers Act, 1863, to be kept of the church or religious persuasion to which each prisoner belongs;
- (2). A journal, in which he shall record all such matters as he is directed to record therein by this act, and all other occurrences of importance within the prison;
- (3). A nominal record of all prisoners committed to his charge, in such form as may be directed by the visiting justices:

(4). A punishment book for the entry of the punishments inflicted for prison offences;

(5). A visitors book for the entry of any observations made by visitors to the prison;

(6). A record of articles taken from prisoners;

(7). A record of the employment of prisoners sentenced to hard labour, and the manner in which they have been so employed;

(8). A list of books and documents committed to his care.

(9). An inventory of all the furniture and movable property belonging to the prison;

(10). An account of all prison receipts and disbursements.

78. The gaoler shall be responsible for the safe custody of the journals, registers, books, commitments, and all other documents confided to his care.

79. The gaoler shall not be absent from the prison for a night without permission in writing from a visiting justice; and his leave of absence, with the name of the visiting justice granting it, shall be entered in his journal; but if absent without leave for a night, from unavoidable necessity, he shall state the fact, and the cause of it, in his journal.

80. Where a deputy gaoler is appointed to a prison, he shall be legally competent to perform any duty required by law to be performed by the gaoler, and when the gaoler is absent from the prison the deputy gaoler shall perform all his duties. Where there is no deputy gaoler, or in case of his services not being available by reason of sickness or other unavoidable cause, the gaoler shall, when absent from the prison on leave, appoint, with the consent of the visiting justices, an officer of the prison to act as his substitute, and during such absence the substitute so appointed shall have all the powers and perform all the duties of the gaoler.

The deputy gaoler, when in charge of the prison as gaoler, shall, if absent from the prison from any unavoidable cause, or unable from sickness to perform his duties, appoint a substitute with the sanction of the visiting justices.

#### *Matron.*

81. The matron shall reside in the prison. She shall have the care and superintendence of the whole female department. The wards, cells, and yards where females are confined shall be secured by locks different from those securing the wards, cells, and yards allotted to male prisoners, and the keys of those locks shall be kept in the custody of the matron.

82. The matron shall, so far as practicable, visit and inspect every part of the prison occupied by females, and see every female prisoner once at least in every twenty-four hours, and in default of such daily visits and inspections, she shall state in her journal how far she has omitted them, and the causes thereof. She shall, at least once during the week, go through such part of the prison at an uncertain hour of the night, which visit, with the hour and state of such part of the prison at the time, shall be recorded in her journal.

83. The matron shall not be absent from the prison for a night without permission in writing from a visiting justice on the recommendation of the gaoler; and her leave of absence, with the name of the visiting justice granting it, shall be entered in her journal; but if absent without leave for a night from unavoidable necessity, she shall state the fact, and the cause of it, in her journal.

84. The matron shall, with the consent of the gaoler, and with the approval of the visiting justices, appoint a female officer of the prison to act as deputy matron whenever she is absent on leave from the prison, and during such absence the deputy matron shall have all the powers and duties of the matron. Before leaving the prison the matron shall personally give over the charge of the part of the prison occupied by females to the deputy matron.

85. The matron shall keep a journal, in which she shall record all occurrences of importance within her department, and punishments of female prisoners, and lay the journal before the gaoler daily, and before the visiting justices at their ordinary meetings.

#### *Surgeon.*

86. The surgeon shall visit the prison at least twice in every week, and oftener if necessary, and shall see every prisoner in the course of the week. He shall daily visit the prisoners, if any, confined in punishment cells, and he shall visit daily, and oftener if necessary, such of the prisoners as are sick, and, when necessary, shall direct any prisoner to be removed to the infirmary.



87. The surgeon shall enter, in the English language, day by day, in his journal, to be kept in the prison, an account of the state of every sick prisoner, the name of his disease, a description of the medicines and diet, and any other treatment which he may order for such prisoner.

88. The surgeon shall, once at least in every three months, inspect every part of the prison, and enter in his journal the result of each inspection, recording therein any observations he may think fit to make on any want of cleanliness, drainage, warmth, or ventilation; any bad quality of the provisions, any insufficiency of clothing or bedding, any deficiency in the quantity or defect in the quality of the water, or any other cause which may affect the health of the prisoners.

89. Whenever the surgeon has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment, he shall report the case in writing to the gaoler, together with such directions as he may think proper, and he shall call the attention of the chaplain to any prisoner who appears to require his special notice.

90. The surgeon may, in any case of danger or difficulty which appears to him to require it, call in additional medical assistance; and no serious operation shall be performed without a previous consultation being held with another medical practitioner, except under circumstances not admitting of delay, such circumstances to be recorded in his journal.

91. The surgeon shall forthwith on the death of any prisoner, enter in his journal the following particulars: viz. at what time the deceased was taken ill, when the illness was first communicated to the surgeon, the nature of the disease, when the prisoner died, and an account of the appearances after death (in cases where a post mortem examination is made), together with any special remarks that appear to him to be required.

92. In case of sickness, necessary engagement, or leave of absence, to be given by the visiting justices, the surgeon shall appoint a substitute, approved of by the visiting justices. The name and residence of the substitute shall be entered in his journal.

#### *Prison Officers.*

93. All officers of the prison shall obey the directions of the gaoler, subject to the regulations of this act, and all subordinate officers shall perform such duties as may be directed by the gaoler, with the sanction of the visiting justices, and the duties of each subordinate officer shall be inserted in a book to be kept by him.

94. Subordinate officers shall not be absent from the prison without leave from the gaoler, and before absenting themselves they shall leave their keys, instruction book, and report book in the gaoler's office.

95. Subordinate officers shall not be permitted to receive any visitors within the prison without permission of the gaoler.

96. All subordinate officers shall frequently examine the state of the cells, bedding, locks, bolts, &c., and shall seize all prohibited articles, and deliver them to the gaoler forthwith.

#### *Porter.*

97. The officer acting as gate porter may examine all articles carried in or out of the prison, and may stop any person suspected of bringing in spirits or other prohibited articles into the prison, or of carrying out any property belonging to the prison, giving immediate notice thereof to the gaoler.

#### *Reports.*

98. Within one week after the termination of every assize or court of quarter sessions, the gaoler shall transmit by post to one of her Majesty's Principal Secretaries of State a calendar containing the names, crimes, and sentences of every prisoner tried at such assize or court of quarter sessions in such form and containing such particulars as may be required by the Secretary of State; and whenever such court adjourns for any longer time than one week, the day upon which the adjournment is made shall be deemed the termination of the session within the meaning of this regulation; and every adjourned session for the trial of prisoners shall, for the purposes of this act, be deemed a separate session; and every gaoler who neglects or refuses to transmit such calendar, or wilfully transmits a calendar containing any false or imperfect statement, shall for every such offence forfeit a sum not exceeding 20*l.*, to be recovered summarily.

99. The visiting justices shall, once at least in each quarter of the year, carefully examine the following books kept by

the gaoler of every prison, that is to say, the register kept in pursuance of the Prison Ministers Act, 1863, the journal, the nominal record, the punishment book, the visitors book, the record of articles taken from prisoners, the record of the employment of prisoners, the list of books and documents committed to his care, the inventory and the account of prison receipts and disbursements, and shall report to the justices in sessions assembled any special circumstances which call for notice in respect of such books. The gaoler shall also at such sessions answer, on oath if required, the inquiries of the justices with respect to the condition of the prison and of the prisoners, and with respect to any other matters relating thereto. He shall at the same time present a certificate, signed by himself, containing a declaration how far the regulations of this act with respect to the separation of prisoners and enforcement of hard labour have been complied with, and shall point out any deviation therefrom which has taken place since his last attendance at sessions.

100. The journals of the chaplain and surgeon shall, once at least in each quarter of a year, be laid before the justices in sessions assembled at such time as they may appoint, and shall be signed by the chairman of the sessions in proof of the same having been there produced. The chaplain shall once in the year, and he may at any sessions, deliver to the justices in sessions assembled a statement of the condition of the prison to which he is attached, and his observations thereon; and the surgeon shall, once at least in each quarter of a year, report to the justices in sessions assembled the condition of the prison, and the state of health of the prisoners under his care.

101. There shall be kept in every prison a book, to be called the non-resident officers book, in which the chaplain and any other officer of the prison not residing within the prison, but attending on or required to attend on such prison, shall regularly enter the date of every visit made to the prison by such officer; and every entry shall be signed with the name and be in the handwriting of such officer, and such book shall, once at least in each quarter of a year, be laid before the justices in sessions assembled at such time as they may appoint, and shall be signed by the chairman of the sessions in proof of the same having been produced. The gaoler of every prison shall be responsible for the safe custody of such book, and shall at all times, when required so to do, produce it for inspection to the visiting justices, or to any justice of the peace for the county, riding, division, hundred, district, city, town, or place to which the prison belongs.

#### *Construction and Application of Schedule.*

102. Subject to the provisions of this act the justices in sessions assembled shall make such rules as they think expedient with respect to the classification and treatment of prisoners who are not debtors and are not criminal prisoners within the meaning of this act.

103. Any rules made by the justices in sessions assembled, or by the visiting justices, and any dietary tables framed in pursuance of this act, shall be deemed to be regulations of the prison within the meaning of this act.

104. All officers of a prison shall be deemed to be subordinate officers with the exception of the gaoler, the chaplain, the surgeon, the matron, and any minister appointed under the Prison Ministers Act.

#### SCHEDULE II.

<i>Prisons of</i>	<i>Legal Character of Prison.</i>	<i>County.</i>
Aberystwith . . .	Borough Prison	Cardigan.
Brad'ninch . . .	" . . .	Devon.
Faversham . . .	" . . .	Kent.
Helstone . . .	" . . .	Cornwall.
King's Lynn . . .	" . . .	Norfolk.
Lichfield . . .	" . . .	Stafford.
Maldon . . .	" . . .	Essex.
Newcastle under-Lyme . . .	" . . .	Stafford.
Penzance . . .	" . . .	Cornwall.
Richmond . . .	" . . .	York.
Romney Marsh . . .	Liberty	Kent.
Rye . . .	Borough	Sussex.
South Molton . . .	" . . .	Devon.
Tenterden . . .	" . . .	Kent.

## SCHEDULE III.

## LIST OF ACTS REPEALED.

- 4 Geo. 4, c. 64—An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales.—*The whole act.*
- 5 Geo. 4, c. 85—An Act for amending an Act of the last Session of Parliament relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales.—*The whole act.*
- 6 Geo. 4, c. 40—An Act to enable Justices of the Peace in England in certain Cases to borrow Money on Mortgage of the Rate of the City, Riding, or Place for which such Justices shall be then acting.—*The whole act.*
- 7 Geo. 4, c. 18—An Act to authorise the Disposal of unnecessary Prisons in England.—*The whole act.*
- 5 & 6 Will. 4, c. 38—An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain.—*Sects. 2, 5, 6, 11, and 12.*
- 5 & 6 Will. 4, c. 76—An Act to provide for the Regulation of Municipal Corporations in England and Wales.—*Sects. 115 and 116.*
- 6 & 7 Will. 4, c. 105—An Act for the better Administration of Justice in certain Boroughs.—*Sects. 1 and 2.*
- 1 Vict. c. 78—An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales.—*Sects. 37 and 38.*
- 2 & 3 Vict. c. 56—An Act for the better ordering of Prisons.—*The whole act, except sects. 18, 19, 20, and 21, and except sects. 22 and 23 so far as they relate to prisons or places of confinement to which this act does not extend.*
- 3 & 4 Vict. c. 25—An Act to amend the Act for the better ordering of Prisons.—*The whole act.*
- 5 & 6 Vict. c. 53—An Act to encourage the Establishment of District Prisons.—*The whole act.*
- 5 & 6 Vict. c. 98—An Act to amend the Law relating to Prisons.—*Sects. 1, 2, 4, 8, 9, 13, 25, and 30, so far as the said sections relate to prisons within the provisions of this act.*
- 7 & 8 Vict. c. 50—An Act to extend the Powers of the Act for encouraging the Establishment of District Courts and Prisons.—*The whole act.*
- 7 & 8 Vict. c. 94—An Act to enable Barristers to arbitrate between Counties and Boroughs to submit a Special Case to the Superior Courts.—*The whole act.*
- 11 & 12 Vict. c. 39—An Act to facilitate the raising of Money by Corporate Bodies for building or repairing Prisons.—*The whole act.*
- 16 & 17 Vict. c. 43—An Act for enabling the Justices of Counties to contract in certain Cases for the Maintenance and Confinement of convicted Prisoners in the Gaols of adjoining Counties.—*The whole act.*

25 & 26 Vict. c. 44—An Act to amend the Law relating to the giving of Aid to discharged Prisoners.—*Sects. 2 and 3.*

26 & 27 Vict. c. 79—An Act for the Amendment of the Law relating to the Religious Instruction of Prisoners in County and Borough Prisons in England and Scotland.—*So much of sect. 3 as is inconsistent with the provisions of this act, and the whole of sect. 5, but so far only as relates to prisons to which this act applies.*

## CAP. CXXVII.

An Act to amend the Law relating to small Penalties.

[6th July, 1865.]

- Sect. 1. *Short title.*  
 2. *Commencement of act.*  
 3. *Definition of "penalty."*  
 4. *Recovery of small penalties.*  
 5. *Saving as to hard labour.*  
 6. *Application of act.*  
 7. *Not to apply to penalties under Revenue Acts.*  
 8. *Extent of act.*

Whereas it is expedient to amend the law relating to small penalties: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Small Penalties Act, 1865."

2. This act shall come into operation on the 1st August, 1865.

3. The word "penalty" in this act shall include any sum of money recoverable in a summary manner.

4. Where upon summary conviction any offender may be adjudged to pay a penalty not exceeding 5*l.*, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid:—

For any penalty	The imprisonment not to exceed—
Not exceeding 10 <i>s.</i>	Seven days.
Exceeding 10 <i>s.</i> and not exceeding 1 <i>l.</i>	Fourteen days.
Exceeding 1 <i>l.</i> but not exceeding 2 <i>l.</i>	One month.
Exceeding 2 <i>l.</i> but not exceeding 5 <i>l.</i>	Two months.

5. Nothing in this act contained shall affect the power of imposing hard labour in addition to imprisonment in cases where hard labour might, on non-payment of the penalty, have been so imposed if this act had not been passed.

6. This act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any act of Parliament, whether passed before or after the commencement of this act; and all provisions of any act of Parliament authorising, in the case of non-payment of a penalty not exceeding 5*l.*, a longer term of imprisonment than is provided by this act, shall be repealed.

7. This act shall not apply to any penalty imposed by any act of Parliament relating to the inland revenue.

8. This act shall extend to England only.

## LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

28 &amp; 29 VICTORIA.—SESSION 1865.

## CAP. I.

An Act to enable the Cole Valley and Halstead Railway Company to increase their Capital.

## CAP. II.

An Act to regulate the Mode of Valuation of the underground Pipes or Works in the City of Glasgow belonging to the City and Suburban Gas Company of Glasgow, for the Purpose of Assessment under the Glasgow Police Act, 1862.

## CAP. III.

An Act to enable the Metropolitan Board of Works to open a new Street in Whitechapel, and to remove Middle-row, Holborn, all in the County of Middlesex.

## CAP. IV.

An Act to reduce the Capital and Borrowing Powers of the Misty, Thorpe, and Walton Railway Company; and for other Purposes.

## CAP. V.

An Act to confer further Powers upon the Brighton, Hove, and Preston Constant Service Waterworks Company.

## CAP. VI.

An Act to enable the Rosendale Union Gas Company to raise additional Capital.

## CAP. VII.

An Act to dissolve the Union subsisting between the Visitors of the Lunatic Asylum for the Counties of Leicester and Rutland and the Corporation of the Borough of Leicester, for the Admission of Lunatic Paupers from the said Borough into the said Asylum, and to empower the said Corporation to provide a separate Asylum; and to authorise the Corporation to establish a Market for the Sale of Hay and other Commodities, in lieu of the existing Market; and to extend the Powers of the said Corporation with respect to Streets in the said Borough; and for other Purposes.

## CAP. VIII.

An Act for making an Embankment on the South Shore of the River Shannon, near to the City of Limerick; and for other Purposes.

## CAP. IX.

An Act for authorising the Local Board for the District of the Borough of Oswestry and the Liberties thereof to provide a better Supply of Water to the District, and to complete the Sewerage of the District, and to dispose of the Sewage for Irrigation; and for other Purposes.

## CAP. X.

An Act to repeal an Act for making, repairing, and improving certain Roads leading to and from Helston, in the County of Cornwall, and to make other Provisions in lieu thereof; and for other Purposes.

## CAP. XI.

An Act to enable the Ramsbottom Gas Company to raise additional Capital.

## CAP. XII.

An Act to authorise the Mayor, Aldermen, and Burgesses of the Borough of Bolton to construct an Aqueduct and other Works in connexion with the intended Wayoh Reservoir; and to make further Provisions for the Regulation of the Borough.

## CAP. XIII.

An Act for better supplying with Gas the Inhabitants of Red-hill, and of certain Places in the Neighbourhood thereof, in the County of Surrey.

## CAP. XIV.

An Act to enable the South Metropolitan Gas-light and Coke Company to purchase additional Lands; to remove a Church in the Neighbourhood of their Works; and for other Purposes relating to the Company.

## CAP. XV.

An Act for more effectually lighting Folkestone and its Neighbourhood with Gas.

## CAP. XVI.

An Act to incorporate the Banbury Water Company (Limited), and to make further Provision for the Supply of Water to the Town of Banbury and the Neighbourhood thereof.

## CAP. XVII.

An Act for better supplying with Water the Town of Luton, in the County of Bedford.

## CAP. XVIII.

An Act to enable the Athenry and Ennis Junction Railway Company to raise additional Capital; and for other Purposes.

## CAP. XIX.

An Act to authorise the Construction of a Railway from Poole to Bournemouth.

## CAP. XX.

An Act to authorise the Construction of new, and widening and altering the existing, Streets, and other Works and Improvements in the Borough of Liverpool; and for other Purposes.

## CAP. XXI.

An Act to vest in the Lancashire and Yorkshire Railway Company and the Lancashire Union Railways Company jointly certain Portions of Railway near Blackburn.

## CAP. XXII.

An Act to authorise the widening of the Blackpool Branch of the Preston and Wyre Railway; and for other Purposes.

## CAP. XXIII.

An Act to incorporate a Company for making a Railway to be called "The Luddenden Valley Railway;" to authorise working and other Arrangements with the Lancashire and Yorkshire Railway Company; to enable that Company to subscribe Capital; and for other Purposes.

## CAP. XXIV.

An Act for incorporating the Fareham Gas and Coke Company; for the Increase and Regulation of their Capital; and for other Purposes.

## CAP. xxv.

An Act to extend the Limits within which the Bath Gas-light and Coke Company are authorised to supply Gas, and to enable the Company to construct a Railway or Tramway; to erect additional Works; to raise further Capital; and for other Purposes.

## CAP. xxvi.

An Act for granting further Powers to the Bristol Waterworks Company, and for the Amendment of their existing Act.

## CAP. xxvii.

An Act for the Improvement and Regulation of the proposed new Town of West Worthing, in the Parish of Heene, in the County of Sussex.

## CAP. xxviii.

An Act to incorporate the Exmouth Gas, Coke, and Water Company (Limited), and to make further Provision for lighting the Town of Exmouth and certain neighbouring Places with Gas.

## CAP. xxix.

An Act to enable the Shrewsbury and North Wales Railway Company to raise further Sums, and to divide their Shares, and to make Deviations and Alterations in their authorised Line of Railway; and for other Purposes.

## CAP. xxx.

An Act to amend the Acts relating to the East and West India Dock Company.

## CAP. xxxi.

An Act to authorise the Metropolitan and St. John's Wood Railway Company to extend their Railway to Hampstead; and for other Purposes.

## CAP. xxxii.

An Act to enable the Crystal Palace District Gas Company to raise additional Capital.

## CAP. xxxiii.

An Act to enable the Corporation of Bristol to improve the River Avon and the Docks of Bristol.

## CAP. xxxiv.

An Act for better supplying with Water the Borough of St. Alban, and the Parishes and Places of St. Albans, St. Peter, St. Michael, St. Stephen, and Saundridge, all in the County of Hertford.

## CAP. xxxv.

An Act for enabling the Tyldesley-with-Shakerley Local Board to supply Gas in their District, and in adjoining Places; and for other Purposes.

## CAP. xxxvi.

An Act to confer further Powers upon the Chesterfield Waterworks and Gas-light Company.

## CAP. xxxvii.

An Act to authorise the Carmarthen and Cardigan Railway Company to form into separate Capitals the Capitals authorised to be raised by the Carmarthen and Cardigan Railway Acts, 1862 and 1863; and to extend the Times granted by the said Acts for the Purchase of Lands and Execution of Works.

## CAP. xxxviii.

An Act for the Supply of the City of Winchester and its Neighbourhood with Water and with Gas, and for incorporating into One Company the Winchester Waterworks Company (Limited) and the Winchester Gas-light and Coke Company.

## CAP. xxxix.

An Act for conferring further Powers on the Lostwithiel and Fowey Railway Company in relation to their Capital; and for other Purposes.

## CAP. xl.

An Act to define the Capital of the Midland Great Western Railway of Ireland Company; to enable the Company to create Preference Shares; and for other Purposes.

## CAP. xli.

An Act for enabling the Buckfastleigh, Totnes, and South Devon Railway Company to extend their Railway to Ashburton; and for other Purposes.

## CAP. xlii.

An Act to confirm an Agreement between the Bristol and Exeter Railway Company and the Devon and Somerset Railway Company; and for other Purposes.

## CAP. xliii.

An Act to enable the Great Southern and Western Railway Company to create Debenture Stock.

## CAP. xlii.

An Act to enable the Kington and Eardisley Railway Company to divide their Shares; and for other Purposes.

## CAP. xlv.

An Act to grant further Powers to the Stafford and Uttoxeter Railway Company.

## CAP. xli.

An Act for enabling the Corporation for preserving and improving the Port of Dublin, to lay down and maintain Tramways on the Quays and elsewhere at Dublin; for amending the Acts relating to the Corporation; and for other Purposes.

## CAP. xlvii.

An Act for better supplying with Water the Inhabitants of the Townships of Runcorn, Weston, and Halton, in the Parish of Runcorn, in the County of Chester.

## CAP. xlviii.

An Act to empower the Glasgow and South-western Railway Company to contribute Funds towards and hold Shares in the Undertaking of the City of Glasgow Union Railway Company; and for other Purposes.

## CAP. xlix.

An Act for incorporating the Rastrick Gas Company (Limited), and extending their Powers; and for other Purposes.

## CAP. l.

An Act to enable the London, Brighton, and South-coast Railway Company to make new Railways from St. Leonards to their Ouse Valley and Tunbridge Wells and Eastbourne Lines, and Deviations in those Lines; and for other Purposes.

## CAP. li.

An Act for the Construction of Railways to connect, by means of the Thames Tunnel, certain Railways on the Surrey Side of the River Thames with certain Railways on the Middlesex Side of the said River, to be called "The East London Railway;" and for other Purposes.

## CAP. lii.

An Act for incorporating and granting other Powers to the Birstal Gas-light Company.

## CAP. liii.

An Act to enable the Bodmin Railway Company to extend their Railway to the Bodmin and Wadebridge Railway; to raise further Moneys; and for other Purposes.

## CAP. liv.

An Act to incorporate a Company for better supplying with Gas Littleborough, in the Parish of Rochdale, in the County of Lancaster, and the Neighbourhood thereof; and for other Purposes.

## CAP. lv.

An Act for better lighting with Gas the District of Brierley Hill, and certain Parishes and Places adjacent thereto, in the Counties of Stafford and Worcester.

## CAP. lvi.

An Act to authorise the Newport Pagnell Railway Company to extend their Railway to Olney, in the County of Bucks.

## CAP. lvii.

An Act to reconstitute the Preston Gas Company; to authorise them to raise further Moneys; and for other Purposes.

## CAP. lviil.

An Act to amend an Act for building a new Chapel upon Portsmouth Common, in the Parish of Portsea, in the County of Southampton; and for other Purposes.

## CAP. lix.

An Act to amend the Galway Commissioners Waterworks Act, 1863.

## CAP. lx.

An Act to transfer the Statute Labour Roads in the Burgh of Dundee to the Commissioners of Police of the said Burgh, and to provide for the Management and Maintenance of the said Roads.

## CAP. lxi.

An Act to incorporate a Company for making a Railway from the Darlington and Barnard Castle Branch of the North-eastern Railway, near Gainsford, in the County of Durham, to Foresett, in the North Riding of the County of York; to authorise Working and other Arrangements with the North-eastern Railway Company; and for other Purposes.

## CAP. lxii.

An Act to authorise the Great Eastern Railway Company to make a Railway from their Saint Ives and March Railway at Somersham to the Ramsey Railway at Ramsey, in the County of Huntingdon.

## CAP. lxiii.

An Act for consolidating and amending the Acts relating to Markets and Slaughter-houses in Glasgow; and for other Purposes.

## CAP. lxiv.

An Act to incorporate the Gosport Gas and Coke Company, and to make further Provision for lighting with Gas the Town of Gosport, and certain Parishes and Places in the Neighbourhood thereof; and for other Purposes.

## CAP. lxv.

An Act to enable the Local Board of Health for the District of the Borough of Llanelly to construct Waterworks, and supply their District and adjoining Places with Water; and for other Purposes.

## CAP. lxvi.

An Act to enable the London, Brighton, and South-coast Railway Company to make short Junction Railways to connect their existing and authorised Railways in the County of Surrey, and to acquire additional Lands; and for other Purposes.

## CAP. lxvii.

An Act to restore the Exemption of Goods loaded or unloaded on the Lands or Docks of Robert Vyner, Esq., Part of and adjoining to the Great Float at Birkenhead, from the Payment of Dock Rates on Goods to the Mersey Docks and Harbour Board.

## CAP. lxviii.

An Act to enable the Whitehaven Junction Railway Company to enlarge their Station Accommodation at Whitehaven; to raise a further Sum of Money; and for other Purposes.

## CAP. lxix.

An Act to authorise the Commissioners of the Glasgow Corporation Waterworks to construct a Bridge for carrying the Aqueduct from Loch Katrine to Glasgow over the River Endrick; to provide for the better Distribution of Water; and for other Purposes.

## CAP. lxx.

An Act to make better Provision respecting the Repayment of Money borrowed by the Corporation of Sunderland; and for other Purposes.

## CAP. lxxi.

An Act for authorising the Acquisition by the London and South-western Railway Company and the Devon and Somerset Railway Company of the Undertaking and Property of the Ilfracombe Railway Company; and for other Purposes.

## CAP. lxxii.

An Act to grant various additional Powers to the North London Railway Company.

## CAP. lxxiii.

An Act to enable the Corporation of the President, Vice-Presidents, Treasurer, and Members of the School for the Indigent Blind to sell and grant Leases of the Land belonging to them, and to purchase other Land, and for otherwise enabling them the better to carry out the Purposes of the said Corporation.

## CAP. lxxiv.

An Act to enable the Glasgow and South-western Railway Company to make new Railways between Kilmarnock and Glasgow; and for other Purposes.

## CAP. lxxv.

An Act for better supplying the Township of Horsforth, in the West Riding of the County of York, with Water; and for other Purposes.

## CAP. lxxvi.

An Act for incorporating and granting other Powers to the Drighlington and Gildersome Gas-light Company.

## CAP. lxxvii.

An Act to authorise the Liverpool United Gas-light Company to increase their Capital, and to purchase additional Lands; and for other Purposes.

## CAP. lxxviii.

An Act to extend for a further Period the Powers of the Wexford Harbour Embankment Company for the Completion of their Undertaking; and to amend the Acts relating to the said Company; and for other Purposes.

## CAP. lxxix.

An Act to amend the Provisions of the Acts relating to the Company of Proprietors of the Stourbridge Navigation, and to confer further Powers on that Company; and for other Purposes.

## CAP. lxxx.

An Act for more effectually maintaining and repairing several Roads adjoining or near to the Town of Great Torrington, in the County of Devon; and for new Powers; and for other Purposes.

## CAP. lxxxi.

An Act for authorising an Extension of the Corwen and Bala Railway; for abandoning Portions of the Corwen and Bala and Bala and Dolgelly Railways; and for other Purposes.

## CAP. lxxxii.

An Act to enable the Weald of Kent Railway Company to make a Deviation of their authorised Line of Railway; and for other Purposes.

## CAP. lxxxiii.

An Act to vest the Carmyllie private Railway in the Scottish North-eastern Railway Company; Powers to that Company to take Tolls; raise additional Capital; and for other Purposes.

## CAP. lxxxiv.

An Act to enable the Maryport and Carlisle Railway Company to construct the Derwent Branch Railway; to enlarge the Bull Gill Station; to purchase additional Lands; to raise further Moneys; and for other Purposes.

## CAP. lxxxv.

An Act to empower the Port Talbot Company to raise additional Capital; and for other Purposes.

## CAP. lxxxvi.

An Act to enable the Whitehaven, Cleator, and Egremont Railway Company to make Branches and other Works, and to extend their Railway to Bigrigg Moor, in the County of Cumberland; to raise further Capital; and for other Purposes.

## CAP. lxxxvii.

An Act for authorising the Construction of Railways in the County of Northumberland, to be called "The Hexham and Allendale Railway;" and for other Purposes.

## CAP. lxxxviii.

An Act to authorise the Construction of Docks at King's Lynn, and for other Purposes relating to that Undertaking.

CAP. lxxxix.

An Act for authorising the London and South-western Railway Company to abandon the making of Lines of Railway at Kensington and Hammersmith, and to make other Lines of Railway instead thereof; and to make the Chiswick Curve; and for other Purposes.

CAP. xc.

An Act for enabling the Mayor, Aldermen, and Citizens of the City of Manchester to construct new Streets, enlarge Markets, improve the Channel of the River Medlock, and to effect further Improvements in the said City; and for other Purposes.

CAP. xci.

An Act to incorporate a Company for making a Railway from the South Durham and Lancashire Union Branch of the North-eastern Railway at Lartington, to Middleton in Teesdale; Powers to that Company to subscribe; and for other Purposes.

CAP. xcii.

An Act for enabling the Agra and Masterman's Bank (Limited) to divide the original Shares of One hundred Pounds in the Capital of the Company into two Shares of Fifty Pounds each.

CAP. xciii.

An Act to extend the Time for completing the Aylesbury and Buckingham Railway; to raise additional Capital; and for other Purposes.

CAP. xciv.

An Act to reincorporate the Gomersal Gas-light Company (Limited); to authorise the raising of additional Capital; and for other Purposes.

CAP. xcv.

An Act for establishing a Cattle Market at Market Drayton, in the County of Salop.

CAP. xcvi.

An Act for granting further Powers to the Belfast Gas-light Company.

CAP. xcvi.

An Act to transfer to the Bristol and Exeter Railway Company the Powers of constructing and working the Cheddar Valley and Yatton Railway; to extend the Time for purchasing Lands; to authorise the Purchase of additional Lands; and for other Purposes.

CAP. xcvi.

An Act for a Joint Station at Bristol, for the Great Western, Bristol and Exeter, and Midland Railway Companies; and for other Purposes.

CAP. xcix.

An Act for enabling the Local Board of the Borough of Carnarvon to supply their District with Water.

CAP. c.

An Act to enable the London and Blackwall Railway Company to lease their Undertaking to the Great Eastern Railway Company; and for other Purposes.

CAP. ci.

An Act to authorise the Hammersmith and City Railway Company to alter some of the Works connected with their Railway, and to purchase additional Lands, and to lease or transfer their Undertaking to the Great Western and Metropolitan Railway Companies; and for other Purposes.

CAP. cii.

An Act for authorising the London and South-western Railway Company to make new Lines of Railway in Surrey, and for vesting in them Portions of Railways, and for authorising Agreements between them and other Railway Companies, and for the raising by them of further Moneys; and for other Purposes.

CAP. ciii.

An Act for authorising the London and South-western Railway Company to make and maintain a Railway from their Main Line of Railway at Pirbright by Aldershot to Farnham; and for other Purposes.

CAP. civ.

An Act for authorising the London and South-western Railway Company to make and maintain a Railway from Bideford to Great Torrington; and for other Purposes.

CAP. cv.

An Act to authorise the Great Northern Railway Company to construct a Railway from Hornsey to their Hertford, Luton, and Dunstable Line near Hertford.

CAP. cvi.

An Act for better supplying with Water the Towns of Kidderminster, Stourport, and Bewdley, and certain Parishes and Places adjacent thereto, in the County of Worcester.

CAP. cvii.

An Act to empower the Ventnor Harbour Company to raise additional Capital.

CAP. cviii.

An Act for more effectually paving, lighting, and improving the Town of Ross, in the County of Hereford; for maintaining and providing Markets within such Town; and for supplying the same with Water; and for other Purposes.

CAP. cix.

An Act for better supplying the Town of Rhyl and Places in the surrounding District with Water; and for other Purposes.

CAP. cx.

An Act for better supplying the Town of Gainsborough and the Neighbourhood thereof with Water; and for other Purposes.

CAP. cx.

An Act to enable the North-eastern Railway Company to construct Branch Railways and other Works in the Counties of Durham and York; to acquire additional Lands; and for other Purposes.

CAP. cxii.

An Act for supplying with Water the Burgh of Ayr and Places adjacent.

CAP. cxiii.

An Act to extend the Time for the Purchase of Lands for, and Completion of, the Sligo Extension of the Enniskillen, Bundoran, and Sligo Railway Company; and to enable the Company to raise further Money.

CAP. cxiv.

An Act to enable the Dublin and Antrim Junction Railway Company to create Preference Shares in lieu of unissued, surrendered, and forfeited Shares; and for other Purposes.

CAP. cxv.

An Act to authorise the Enlargement and Maintenance of existing Waterworks in the Township of Glossop, in the Parish of Glossop, in the County of Derby, and the Construction of new Waterworks; and to authorise the Sale of such Waterworks, and the Purchase thereof; and for other Purposes.

CAP. cxvi.

An Act to authorise the Construction, by the London and Blackwall Railway Company, of Railways in the Parishes of Stepney, Poplar, and Limehouse, to be called "The London, Blackwall, and Millwall Extension Railway;" to authorise Agreements with other Companies with reference thereto; and for other Purposes.

CAP. cxvii.

An Act to confer further Powers upon the Metropolitan Railway Company with reference to certain Works and Lands; and to authorise the Lease or Transfer of the Undertaking of the Hammersmith and City Railway Company, and Arrangements with other Parties; and for other Purposes.

## CAP. cxviii.

An Act to authorise the Great Eastern Railway Company to make certain Railways in connexion with their Railways near the Metropolis, and to purchase Station Lands; and for other Purposes.

## CAP. cxix.

An Act to authorise the Hastings and St. Leonards Gas Company to raise a further Sum of Money; and for other Purposes.

## CAP. cxx.

An Act to repeal and consolidate the Acts relating to the Exeter Gas-light and Coke Company, and the Exeter Commercial Gas-light and Coke Company; and to confer further Powers on the Exeter Gas-light and Coke Company; and for other Purposes.

## CAP. cxxi.

An Act for reclaiming from the Sea certain Lands on and near the Eastern and South-eastern Coast of Essex; for making Conduits from the North London Main discharging Sewers to the Coast of Essex; for utilising the Sewage of North London; and for other Purposes.

## CAP. cxxi.

An Act for making a Railway to connect Brean Down Harbour with existing Railways in the County of Somerset; and for other Purposes.

## CAP. cxxiii.

An Act to vary, extend, and consolidate the Powers of the Northern Assurance Company; and for other Purposes relating thereto.

## CAP. cxxiv.

An Act for the further Improvement of the Drainage and Navigation by the River Witham, in the County of Lincoln, and for amending the Acts relating thereto; and for other Purposes.

## CAP. cxv.

An Act to authorise the North British Railway Company to make several Railways in the Parishes of Liberton, Lasswade, and elsewhere, in the County of Edinburgh; and to have Running Powers over the Esk Valley Railway; and for other Purposes.

## CAP. cxxvi.

An Act to authorise the Mayor, Aldermen, and Burgesses of the City and Borough of Ripon, to purchase the Gasworks of the Ripon Gas-light Company, and to supply Gas within the said City and Borough, and the Neighbourhood thereof, in the West and North Ridings of the County of York; and to preclude Questions as to the Style of the City and Borough, and the Name of the Corporation; and for other Purposes.

## CAP. cxxxvii.

An Act to empower the West Sussex Junction Railway Company to make a Deviation from the authorised Line of their Railway; and for other Purposes.

## CAP. cxxxviii.

An Act to repeal, and re-enact with Amendments, the Provisions of the Act relating to the Leamington Priors Gas-light and Coke Company; to extend the Limits of Supply thereby authorised; to authorise an Increase of Capital; and for other Purposes.

## CAP. cxix.

An Act for the Incorporation and better Regulation of the Affairs of the Assam Company.

## CAP. cxxx.

An Act to extend the Kilrush and Kilkee Railway, and to grant further Time for Completion of the Works.

## CAP. cxxxi.

An Act to repeal the Acts relating to the Plymouth and Dartmoor Railway Company; to authorise the raising of additional Capital, and Arrangements with the South Devon Railway Company; and for other Purposes.

## CAP. cxxxii.

An Act for making a Railway from the Bristol and Exeter Railway at Tiverton, to the Devon and Somerset Railway, in the Parish of Morebath, in the County of Devon; and for granting certain Powers to the Bristol and Exeter Railway Company with reference thereto.

## CAP. cxxxiii.

An Act to authorise the Amalgamation of the Dunblane, Doune, and Callander Railway Company with the Scottish Central Railway Company; and for other Purposes.

## CXP. cxxxiv.

An Act to authorise the Amalgamation of the Crieff Junction Railway Company with the Scottish Central Railway Company; and for other Purposes.

## CAP. cxxxv.

An Act for enabling the Caledonian Railway Company to make a Railway from Barrhead to Paisley, and to improve the Railway between Barrhead and Crofthead, all in the County of Renfrew; and for other Purposes.

## CAP. cxxxvi.

An Act for enabling the Caledonian Railway Company to make a Branch Railway for connecting their Main Line, near Dalmakaddar, with the Dumfries, Lochmaben, and Lockerby Junction Railway, near Shielhill, in the County of Dumfries; and for other Purposes.

## CAP. cxxxvii.

An Act to repeal, consolidate, and amend the Provisions of the Acts of Parliament relating to the Company of Merchants of the City of Edinburgh, and to enlarge the Powers of the said Company; to amend the Act relating to Daniel Stewart's Hospital; and for other Purposes.

## CAP. cxxxviii.

An Act to extend the Limits for the Supply of Water, and to authorise the building of a Town Hall, by the Local Board of Health for the District of Merthyr Tydfil; and for other Purposes.

## CAP. cxxxix.

An Act for making a Railway from the Caledonian Railway at Crofthead to Kilmarnock, with a Branch to Beith, in the Counties of Renfrew and Ayr; and for other Purposes.

## CAP. cxl.

An Act for the Extension of the Boundaries of the Municipal Borough and District of Halifax, and otherwise improving the said Borough; to amend and extend the several Powers of the Acts relating thereto; and for other Purposes.

## CAP. cxli.

An Act to extend the Limits of Supply of the Neath Water Company, and to authorise them to construct additional Works; and for other Purposes.

## CAP. cxlii.

An Act to enable the Southampton Gas-light and Coke Company to extend their Limits for the Supply of Gas, and to raise additional Capital; and for other Purposes.

## CAP. cxliii.

An Act to enable the Whitehaven and Furness Junction Railway Company to make Branches and other Works, and to extend their Railway from Millom, in the County of Cumberland, to join the Furness Railway, in the Parish of Dalton, in the County of Lancaster; to raise further Capital; and for other Purposes.

## CAP. cxliv.

An Act to extend the Term and amend the Provisions of the Act relating to the Cromford and Belper Turnpike Road.

## CAP. cxlv.

An Act for enabling the Mayor, Aldermen, and Citizens of the City of Manchester to construct new Works in connexion with their Waterworks; and for other Purposes.



## CAP. cxlvi.

An Act to authorise the Construction of a Pier in Morecambe Bay.

## CAP. cxlvil.

An Act for extending the Powers of the Rickmansworth, Amersham, and Chesham Railway Company.

## CAP. cxlviii.

An Act for the Incorporation of the Ham Oyster Fishery Company, and for authorising them to establish and maintain an Oyster Fishery near the North-east Coast of the Isle of Sheppey, in the County of Kent; and for other Purposes.

## CAP. cxlix.

An Act for authorising the Okehampton Railway Company to make and maintain Extensions of their Railway to Bude, in the County of Cornwall, and to Great Torrington, in the County of Devon, respectively, and to raise further Moneys; and for other Purposes.

## CAP. cl.

An Act to authorise the vesting in the Great Eastern Railway Company of the Bishop Stortford, Dunmow, and Braintree Railway.

## CAP. cli.

An Act to confer further Powers upon the Metropolitan District Railway Company.

## CAP. clii.

An Act to give Effect to an Agreement between the Lord Provost, Magistrates, and Council of the City of Edinburgh and the North British Railway Company with reference to the Fruit and Vegetable Market, and for the Enlargement of the North British Station at Edinburgh; and for other Purposes.

## CAP. clii.

An Act to incorporate a Company for making the Fareham and Netley Railway; and for other Purposes.

## CAP. clii.

An Act for authorising the Teign Valley Railway Company to raise further Moneys; and for other Purposes.

## CAP. cli.

An Act for defining and consolidating the Undertaking and Mortgage Debt of the Bristol Port Railway and Pier Company; and for other Purposes.

## CAP. cli.

An Act to authorise the Cork and Limerick Direct Railway Company to issue Preference Shares in lieu of cancelled Shares, and to create Debenture Stock; and for other Purposes.

## CAP. clii.

An Act for authorising the Isle of Wight Railway Company to provide and work Steam Vessels, and to provide Accommodation for Traffic thereby, and to raise further Moneys; and for other Purposes.

## CAP. clii.

An Act to authorise the Llanelly Railway and Dock Company to raise more Money.

## CAP. cli.

An Act to enable the Mid-Wales Railway Company to make a Railway to join the Central Wales Railway; and for other Purposes.

## CAP. cli.

An Act to amend the Provisions of the West Bromwich Improvement Act, 1854, and the West Bromwich Improvement Amendment Act, 1855.

## CAP. cli.

An Act for enabling the Caledonian Railway Company to make a Branch Railway to Balerno, in the County of Edinburgh; and for other Purposes.

## CAP. clii.

An Act for the better Management of the Marsh Estate of the Mayor, Aldermen, and Burgesses of the Borough of Southampton; and for authorising them to establish and maintain new Markets, and to raise further Moneys; and for other Purposes.

## CAP. clii.

An Act to repeal an Act passed in the Fourth Year of the Reign of Her present Majesty Queen Victoria, intituled "An Act for repairing several Roads leading from the Town of Barnstaple, in the County of Devon, and for making several new Lines of Road connected therewith," and to grant more effectual Powers in lieu thereof; to convert into Turnpike Road Portions of existing Roads; and for other Purposes.

## CAP. cli.

An Act to authorise the opening of certain new Streets in the Borough of Belfast, and to confer certain Powers upon a Company and the Mayor, Aldermen, and Burgesses of the Borough of Belfast for such Purposes.

## CAP. cli.

An Act for empowering the Cheltenham Waterworks Company to extend their Works and Limits of Supply, and to raise a further Sum of Money; and for other Purposes.

## CAP. cli.

An Act for granting certain Powers to the Crays Gas-light and Coke Company (Limited).

## CAP. cli.

An Act to authorise the Amalgamation of the General Terminus and Glasgow Harbour Railway Company with the Caledonian Railway Company; and for other Purposes.

## CAP. cli.

An Act to authorise the Consolidation into One Undertaking of the Inverness and Perth Junction and the Inverness and Aberdeen Junction Railways, and the Union into One Company of the Two Companies to which the said Railways respectively belong; to consolidate and amend the Acts relating to the same Companies; and for other Purposes.

## CAP. cli.

An Act for making a Railway from Bonar Bridge Railway Station at Ardgay, in the County of Ross, to Brora, in the County of Sutherland, to be called "The Sutherland Railway;" and for other Purposes.

## CAP. cli.

An Act to authorise the Carmarthen and Cardigan Railway Company to extend their Railway near Kidwelly, in Carmarthenshire.

## CAP. cli.

An Act to continue the Winchcomb District of Turnpike Roads Trust, in the County of Gloucester; and for other Purposes.

## CAP. cli.

An Act to enable the Mold and Denbigh Junction Railway Company to raise further Sums, and to divide their Shares, and to make Deviations and Alterations in their authorised Line of Railway; and for other Purposes.

## CAP. cli.

An Act to authorise the Bishop's Castle Railway Company to extend their Railway to the Minsterley Branch of the Shrewsbury and Welshpool Railway in Shropshire; and for other Purposes.

## CAP. cli.

An Act for transferring the New North Road or Parliamentary Road, Glasgow, to the Board of Police of Glasgow; and for other Purposes.

## CAP. cli.

An Act for extending the Time for the Purchase of Lands and the Completion of the Railway authorised by the Carmarthenshire Railway Act, 1862.

## CAP. clxxvi.

An Act for the Extension of the Wrexham, Mold, and Con-  
nah's Quay Railway to Farndon; and for other Pur-  
poses.

## CAP. clxxvii.

An Act to authorise the Stonehouse and Nailsworth Railway  
Company to extend their Railway from Dudbridge to the  
Great Western Railway at Stroud; and for other Pur-  
poses relating to the same Company.

## CAP. clxxviii.

An Act for authorising the making by the Tottenham and  
Hampstead Junction Railway Company of Lines of Rail-  
way by way of Substitution for Lines of Railway already  
authorised to be made by them; and for authorising Ar-  
rangements between them and the Great Eastern Railway  
Company and the Midland Railway Company; and for  
other Purposes.

## CAP. clxxix.

An Act to enable the Furness Railway Company to construct  
new Lines of Railway, and to raise further Moneys; and  
for other Purposes.

## CAP. clxxx.

An Act for maintaining, improving, and managing the Public  
Roads and Bridges in the County of Dumfries.

## CAP. clxxxi.

An Act to authorise the Construction of a Railway from Wol-  
verhampton to Walsall, all in the County of Stafford.

## CAP. clxxxii.

An Act to authorise the Great Northern Railway Company  
to construct a Railway in Lincolnshire from Sleaford to  
Bourn.

## CAP. clxxxiii.

An Act for separating for certain Purposes the Borough of  
Belfast from the County of Antrim; and for making better  
Provision respecting Contribution by the Borough towards  
the Expenses of the County; and for amending the Pro-  
visions of certain of the Acts relating to the Borough; and  
for other Purposes.

## CAP. clxxxiv.

An Act to authorise the Great Eastern Railway Company to  
raise a further Sum of Money, and to consolidate certain  
of their Preference Stocks, and to confer Powers upon the  
said Company with reference to Lowestoft Harbour; and  
for other Purposes.

## CAP. clxxxv.

An Act for making a Railway from Presteign, in the County  
of Radnor, to join the Central Wales Railway, in the Parish  
of Llangunllo, to be called "The Lugg Valley Railway;"  
and for other Purposes.

## CAP. clxxxvi.

An Act to enable the Solway Junction Railway Company to  
make certain Deviations in their authorised Line; and for  
other Purposes.

## CAP. clxxxvii.

An Act to amend and enlarge the Powers and Provisions of  
the Westminster Improvement and Incumbered Estate  
Act, 1861; for winding up the Affairs of the Commission;  
for the compulsory Purchase of Lands and the Completion  
of the Improvements; Borrowing Power; and for other  
Purposes.

## CAP. clxxxviii.

An Act for amending and extending the Burnham Tidal  
Harbour Act, 1860, and for enlarging the Powers of the  
Tidal Harbour Company; and for other Purposes.

## CAP. clxxxix.

An Act for better supplying with Water the Town and  
Borough of Belfast and other Places, and for altering  
and amending the Constitution of the Corporation of the  
Belfast Water Commissioners; and for other Purposes.

## CAP. cxc.

An Act to enable the Denbigh, Ruthin, and Corwen Railway  
Company to raise additional Capital; and for other Pur-  
poses.

## CAP. xcxi.

An Act to authorise the Edgware, Highgate, and London  
Railway Company to construct a short Line of Railway to  
connect their Railway with the Tottenham and Hampstead  
Junction Railway; and for other Purposes.

## CAP. xcxi.

An Act for making Railways from the Hammersmith and  
City Railway through Fulham to the North Shore of the  
River Thames; and for other Purposes.

## CAP. xcxi.

An Act to empower the Lancashire Union Railways Com-  
pany to construct an Extension Line to St. Helens and  
other Branches, in the County of Lancaster; and for other  
Purposes.

## CAP. xcxi.

An Act to authorise the Lynn and Sutton Bridge Railway  
Company to execute certain Works at Sutton Bridge, and  
granting other Powers to the same Company.

## CAP. xcxi.

An Act for the Improvement of the Town of Southport and  
the Neighbourhood thereof; and for other Purposes.

## CAP. xcxi.

An Act authorising the Sale or Transfer of Southwark Bridge.

## CAP. xcxi.

An Act to authorise the Sunningdale and Cambridge Town  
Railway Company to make new Railways, and to use Part  
of the Railway of the South-eastern Railway Company;  
and for other Purposes.

## CAP. xcxi.

An Act to authorise the Transfer to the Belfast, Holywood,  
and Bangor Railway Company of the Holywood Branch of  
the Belfast and County Down Railway; and for other Pur-  
poses relating to such Transfer.

## CAP. xcxi.

An Act to extend the Time for the compulsory Purchase of  
Lands for Part of the Undertaking of the Sevenoaks, Maid-  
stone, and Tunbridge Railway Company.

## CAP. cc.

An Act to authorise the Edinburgh and Glasgow Railway  
Company to form a Station on the College Lands at Glas-  
gow, and to subscribe to and hold Shares in the City of  
Glasgow Union Railway Company; and for other Purposes.

## CAP. cci.

An Act to authorise the Markland Railways Company to  
make Branch Railways in the County of Lanark; and for  
other Purposes.

## CAP. cci.

An Act to enable the Caledonian Railway Company to make  
a Branch Railway for connecting their Railway with the  
North British Railway near Edinburgh; and for other  
Purposes.

## CAP. cci.

An Act to authorise the Construction of a Railway, to be  
called "The Skipton and Wharfedale Railway."

## CAP. cci.

An Act for a better Water Supply to Tunbridge Wells, and  
Places near thereto; and for other Purposes.

## CAP. cci.

An Act for the Amalgamation of the Ogmere Valley Rail-  
ways Company and the Ely Valley Extension Railway  
Company; and for other Purposes.

## CAP. ccvi.

An Act to authorise the Construction of Railways from the Port Carlisle Railway to the River Caldew, and thence to the Goods Lines on the Southern Side of the Carlisle Citadel Station; and for other Purposes.

## CAP. ccvii.

An Act for repairing the Road from the Guide Post below Haddon, out of the Bakewell Turnpike Road into the Bentley and Ashbourne Turnpike Road, in the County of Derby; and for other Purposes.

## CAP. ccviii.

An Act for amending the Metropolitan Market Act, 1857 and for other Purposes.

## CAP. ccix.

An Act for the Mansfield and Worksoop Turnpike Road, in the Counties of Nottingham and Derby.

## CAP. ccx.

An Act to give Effect to an Arrangement concerning the Contribution payable under certain Enactments by certain Barons in Roscommon and Galway, and the County of the Town of Galway, to the Midland Great Western Railway of Ireland Company.

## CAP. ccxi.

An Act for conferring further Powers on the Swansea and Aberystwith Junction Railway Company.

## CAP. ccxii.

An Act for maintaining the Public Roads and Bridges in the County of Wigtown.

## CAP. ccxiii.

An Act to authorise the Construction of a Railway across the Firth of Forth in connexion with the Edinburgh and Glasgow and North British Railways, and in Completion of the improved Railway Route between Edinburgh and Perth across the Firth; also other Railways and Works; and for other Purposes.

## CAP. ccxiv.

An Act for the further improving of the Town of Blackpool and the rest of the Township of Layton with Warbrick, in the County Palatine of Lancaster; and for other Purposes; and of which the Short Title is "Blackpool Improvement Act, 1865."

## CAP. ccxv.

An Act for continuing the Term of the Turnpike Roads from Birmingham and Chesterfield, in the County of Derby, to the High Moors, in the Parish of Brampton, in the said County; and for other Purposes.

## CAP. ccxvi.

An Act to authorise the Great Northern Railway Company to construct certain short Lines of Railway at Newark, Spalding, Essendine, and Barkstone; and for other Purposes.

## CAP. ccxvii.

An Act to amalgamate the Monkland Railways Company with the Edinburgh and Glasgow Railway Company.

## CAP. ccxviii.

An Act to authorise the Kidwelly and Llanelly Canal and Tramroad Company to stop up and discontinue the Use of their Canals, and to make a Railway from Burry Port, in the Parish of Pembrey, to join the Mountain Branch of the Llanelly Railway, in the Parish of Llanarthney, Carmarthenshire, with Branches; to change the Name of the Company; and for other Purposes.

## CAP. ccxix.

An Act to empower the West Cornwall Railway Company to enter into Working Arrangements with other Companies, and to lease or sell their Railway; and for other Purposes.

## CAP. ccxx.

An Act to empower the Belfast Central Railway Company to make a Line of Railway and a Tramway, and to empower the Belfast Harbour Commissioners to make a Tramway; and for other Purposes.

## CAP. ccxxi.

An Act to empower the Dublin Trunk Connecting Railway Company to make Junction and Deviation Railways; and for other Purposes.

## CAP. ccxxii.

An Act to authorise the Construction by the Dublin, Wicklow, and Wexford Railway Company of a Railway connecting their Railway with the Dublin and Kingstown Railway; and for other Purposes.

## CAP. ccxxiii.

An Act for making a Railway from Dingwall to Kyle of Lochalsh, to be called "The Dingwall and Skye Railway;" and for other Purposes.

## CAP. ccxxiv.

An Act for authorising the Isle of Wight Railway Company to make additional Railways, and to raise further Moneys; and for other Purposes.

## CAP. ccxxv.

An Act to enable the St. Clement Danes Improvement Company to make certain Improvements in the Parish of St. Clement Danes, in the County of Middlesex; and for other Purposes.

## CAP. ccxxvi.

An Act to authorise the Stourbridge Railway Company to construct a Branch Railway to Stourbridge, and to raise additional Sums of Money for their original Railway and Extension Railway; and for other Purposes.

## CAP. ccxxvii.

An Act for the better Regulation of the Rochester Oyster Fishery; and for other Purposes.

## CAP. ccxxviii.

An Act for incorporating the Lymington River Company, and authorising them to make Improvements of the lower Part of the Lymington River in connexion with the Lymington Docks, and to reclaim Mud Land opposite to the Docks; and for other Purposes.

## CAP. ccxxix.

An Act for enabling the Busby Railway Company to extend their Railway to the Village of East Kilbride, in the County of Lanark; and for other Purposes.

## CAP. ccxxx.

An Act for the Incorporation of the Burnley Market Company; and for other Purposes.

## CAP. ccxxxi.

An Act to revive and extend the Powers of the River Fergus Navigation and Embankment Company; and for authorising the Company to embank and reclaim from the Sea other Waste Lands on the Sides of the River Fergus, in the County of Clare; and for other Purposes.

## CAP. ccxxxii.

An Act to enable the West Cork Railway Company to raise additional Capital; to maintain certain Portions of their Railway constructed beyond the authorised Limits; to extend the Time limited for Completion of Works; and for other Purposes.

## CAP. ccxxxiii.

An Act to incorporate a Company for making Railways in the County of Worcester, to be called "The Halesowen and Bromsgrove Branch Railways;" and for other Purposes.

## CAP. cccxxiv.

An Act to incorporate a Company for making and maintaining a Railway from the Peterston Station of the South Wales Railway to Cadoston-juxta-Barry, with a Branch to Sully, all in the County of Glamorgan; and for other Purposes.

## CAP. cccxxv.

An Act for supplying with Water the Town and Neighbourhood of Newtown, in the County of Montgomery.

## CAP. cccxxvi.

An Act for the Extension of the Hoylake Railway to New Brighton; and for other Purposes.

## CAP. cccxxvii.

An Act to enable the Sidmouth Railway and Harbour Company to make and maintain a Branch from their authorised Railway, in the Parish of Sidmouth; and for other Purposes.

## CAP. cccxxviii.

An Act for making a Railway, to be called "The Spilsby and Firsby Railway;" and for other Purposes.

## CAP. cccxxix.

An Act to enable the Swansea Vale and Neath and Brecon Junction Railway Company to construct a Branch to Abercraze; and for other Purposes.

## CAP. ccxl.

An Act for more effectually maintaining and keeping in repair the Roads, Highways, and Bridges in the County of Aberdeen; for making new Roads in the said County; and for other Purposes.

## CAP. ccxli.

An Act to authorise the Bishop's Castle Railway Company to make Communications between their Railway and certain neighbouring Railways; and for other Purposes relating to their Undertaking.

## CAP. ccxlii.

An Act to abolish certain Restrictions as to the Use of the Connexion Railways of Messrs. Samuel Allsopp & Sons, at Burton-upon-Trent, and to authorise them to construct additional Railways.

## CAP. ccxliii.

An Act to authorise the Construction of a Railway in the Town of Burton-upon-Trent; and for other Purposes.

## CAP. ccxliv.

An Act for incorporating a Company, and for making and maintaining the Hawes and Melmerby Railway; and for other Purposes.

## CAP. ccxlv.

An Act to enable the Glasgow and South-western Railway Company to construct new Railways in connexion with their Railways and the Kirkcudbright and Bridge of Weir Railways; and for other Purposes.

## CAP. ccxlv.

An Act to enable the Glasgow and South-western Railway Company to make and maintain certain Railways in the County of Ayr; and for other Purposes.

## CAP. ccxlvii.

An Act to enable the City of Glasgow Union Railway Company to make Deviations of their authorised Railway; to construct a Railway to the Harbour of Glasgow; and for other Purposes.

## CAP. ccxlviii.

An Act for amalgamating the Undertaking of the Marple New Mills and Hayfield Junction Railway Company with that of the Manchester, Sheffield, and Lincolnshire Railway Company; and for authorising the last-mentioned Company to subscribe to the Undertaking of the Liverpool Central Station Railway Company; and for other Purposes.

## CAP. ccxlix.

An Act for authorising the Construction of a Railway from the Great Eastern Railway at Mellis to Eye, in the County of Suffolk; and for other Purposes.

## CAP. ccl.

An Act for the Improvement and better Government of the Borough of Newcastle-upon-Tyne; and for other Purposes.

## CAP. ccli.

An Act to enable the North-eastern Railway Company to construct a Railway and Works in Leeds, in the County of York; to raise additional Capital; and for other Purposes.

## CAP. cclii.

An Act to incorporate the Committee for managing the General Station at Perth, and to vest in such Committee the whole of that Station and other Works to be made Part thereof; to alter the Division and Appropriation thereof; to authorise the Enlargement and Improvement of that Station and the Construction of new Works; to enable the Committee to recover the Expense of Enlargement from the Companies interested in such Station, and to confer Powers and impose Liabilities on those Companies; and for other Purposes.

## CAP. ccliii.

An Act to authorise the Joint Committee for managing the General Railway Station at Perth, to lease or feu Part of the Ground within the Station Limits for an Hotel, or to erect an Hotel thereon; to enable the Companies interested in the said Station, or the Majority of them, to contribute to the Hotel; and for other Purposes.

## CAP. ccliv.

An Act for regulating the Police, Lighting, Draining, and Improvement of the Burgh of Port Glasgow; for supplying with Water the said Burgh and Places adjacent; and for other Purposes.

## CAP. cclv.

An Act to empower the South Devon Railway Company to make a Branch Railway at Exeter, and to confer upon them further Powers in relation to their own Undertaking and the Undertakings of other Companies; and for other Purposes.

## CAP. cclvi.

An Act for incorporating the South Northumberland Railway Company, and authorising them to make and maintain the South Northumberland Railway; and for other Purposes.

## CAP. cclvii.

An Act to enable the Torquay Gas Company to increase their Capital and extend their Works; and for other Purposes.

## CAP. cclviii.

An Act for making a Railway from near the Waterloo Station of the London and South-western Railway to Whitehall; and for other Purposes.

## CAP. cclix.

An Act to enable the West Riding and Grimsby Railway Company to raise further Sums of Money; to extend the Time limited in respect of One of their authorised Branches; and for other Purposes.

## CAP. cclx.

An Act to enable the Wrexham and Minera Railway Company to make and maintain new Lines of Railway; and for other Purposes.

## CAP. cclxi.

An Act to enable the Wrexham, Mold, and Connah's Quay Railway Company to extend their Railway to Connah's Quay; and for other Purposes.

## CAP. cclxli.

An Act to stop up Part of an existing Road called Gloucester Road, formerly called Hogmore Lane, in the Parish of Saint Mary Abbotts, Kensington, in the County of Middlesex, and to vest the Site thereof in the Owners of the adjoining Lands, and to make a new Road of greater Width in lieu thereof; and for other Purposes.

## CAP. cclxlii.

An Act for incorporating the Bude Canal and Launceston Junction Railway Company, and authorising them to make and maintain the Bude Canal and Launceston Junction Railway; and for other Purposes.

## CAP. cclxiv.

An Act to authorise the Construction of Railways from the Waterford and Limerick Railway at Clonmel to Lismore and Dungarvan; and for other Purposes.

## CAP. cclxv.

An Act to enable the Dublin, Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole Railway Company to extend their Railway to Blesington in Dublin; and for other Purposes in relation to the same Railway.

## CAP. cclxvi.

An Act for making a Railway from the Town of Oban, in the County of Argyle, to the Dunblane, Doune, and Callander Railway near Callander, in the County of Perth, with a Tramway to the Harbour of Oban; and for other Purposes.

## CAP. cclxvii.

An Act for making a new Railway Station at Leeds, in the County of York; and for other Purposes.

## CAP. cclxviii.

An Act to provide for a Contribution by the London and South-western Railway Company to the Undertaking of the London, Chatham, and Dover Railway Company, and for the User by them of Part of the Undertaking; and for other Purposes.

## CAP. cclxix.

An Act to authorise the London, Chatham, and Dover Railway Company to make connecting Railways, and to widen Parts of their existing Railways in Surrey, and to acquire additional Lands; to provide for the Abandonment of a Railway authorised by the Crystal Palace and South London Junction Railway Act, 1862; and for other Purposes.

## CAP. cclxx.

An Act for making a Railway from Stratford-on-Avon to Worcester; and for other Purposes.

## CAP. cclxxi.

An Act to enable the Mold and Denbigh Junction Railway Company to make certain new Lines of Railway, and to abandon a Portion of their authorised Railway; and for other Purposes.

## CAP. cclxxii.

An Act for making a Railway from Scarborough to Whitby.

## CAP. cclxxiii.

An Act for the Dissolution of the Tooting, Merton, and Wimbledon Railway Company, and for vesting their Undertaking, Railway, and Property in the London and South-western Railway Company and the London, Brighton, and South-coast Railway Company; and for authorising the making and maintaining of a Junction Line of Railway at Wimbledon, between the London and South-western Railway, and the Tooting, Merton, and Wimbledon Railway; and for other Purposes.

## CAP. cclxxiv.

An Act to enlarge the Powers of the Tyne Improvement Commissioners, and to facilitate the Construction of the Tynemouth Docks; and for other Purposes.

## CAP. cclxxv.

An Act for enabling the West Yorkshire Railway Company to raise further Money; and for other Purposes.

## CAP. cclxxvi.

An Act for making a Railway from the West Midland Railway to the Coleford, Monmouth, Usk, and Pontypool Railway; and for other Purposes.

## CAP. cclxxvii.

An Act to authorise the Abandonment of the Wem Branch of the Cambrian Railways Company, and a Transfer of the Company's Agreement to work the Aberystwith and Welsh Coast Railway to Thomas Savin, and a Lease of the Company's Undertaking to the said Thomas Savin.

## CAP. cclxxviii.

An Act to make further Provision for the Prevention of Accidents from Gunpowder in the River Mersey and in the Borough of Liverpool; and for other Purposes.

## CAP. cclxxix.

An Act for making a Railway from the Deeside Railway Extension, at Charleston of Aboyne, to the Bridge of Gairn, to be called "The Aboyne and Braemar Railway."

## CAP. cclxxx.

An Act for authorising the Sale by the Assignees in Bankruptcy of the Estate and Effects of the Bagenalstown and Wexford Railway Company of their Line of Railway, and all other their Property, together with the Rights, Powers, Authorities, and Privileges of the said Company, and for the Dissolution of the said Company.

## CAP. cclxxxi.

An Act for authorising the Monmouthshire Railway and Canal Company to execute additional Works; to acquire the Brecon and Abergavenny Canal; to raise additional Capital; and for other Purposes relating to the same Company.

## CAP. cclxxxii.

An Act for authorising the Sidmouth and Budleigh Salterton Railway Company to make and maintain a Deviation of their authorised Line in the County of Devon; and for other Purposes.

## CAP. cclxxxiii.

An Act to enable the Aberystwith and Welsh Coast Railway Company to deviate from some of its authorised Lines; to make certain Extensions at Portmadoc Harbour, Aberdovey, and Cerig-y-Pearrhyn; and for other Purposes.

## CAP. cclxxxiv.

An Act to empower the Brecon and Llandovery Junction Railway Company to make a Deviation of Part of their authorised Railway; and for other Purposes.

## CAP. cclxxxv.

An Act for the Consolidation of the Capitals and Undertakings of the Brecon and Merthyr Tydfil Junction Railway Company; to enable them to raise more Money, and to construct new Lines to Ivor and Dowlais, and a Diversion of the Cyfarthfa Deviation; to extend the Time for the Completion of Parts of their Railways; and for other Purposes.

## CAP. cclxxxvi.

An Act for granting certain Powers to the Bromley Gas Consumers Company (Limited).

## CAP. cclxxxvii.

An Act for the Amalgamation of the Scottish Central Railway Company with the Caledonian Railway Company; and for other Purposes.

## CAP. cclxxxviii.

An Act to enable the Caledonian Railway Company to make and maintain certain Branch Railways; to supersede certain level Crossings; and to improve certain of their Stations and acquire additional Lands in the Counties of Renfrew, Lanark, Edinburgh, Dumbarton, and Cumberland; and for other Purposes.

## CAP. cclxxxix.

An Act for enabling the Caledonian Railway Company to make a Railway from their Line near Cleland, in the County of Lanark, to their Line near Mid-Calder, in the County of Edinburgh, with Branches to the Mineral Fields and Works in that District; and for other Purposes.

## CAP. ccxc.

An Act for enabling the Caledonian Railway Company to extend their Douglas Branch to Muirkirk, in the Counties of Lanark and Ayr; and for other Purposes.

## CAP. ccxci.

An Act to authorise the vesting of the Aberystwith and Welsh Coast Railway in the Cambrian Railways Company by Amalgamation.

## CAP. ccxcii.

An Act for making and maintaining the Chester and West Cheshire Junction Railway; and for other Purposes.

## CAP. ccxciii.

An Act for making a Railway from Coventry to the Southam Railway; and for other Purposes.

## CAP. ccxciv.

An Act for making a Railway from the Town of Crieff to Comrie, with a Railway connecting the said Railway with the authorised Crieff and Methven Junction Railway; and for other Purposes.

## CAP. ccxcv.

An Act to incorporate a Company for maintaining an existing Railway from Carreg Hyldrem, in the County of Merioneth, to Portmadoc, in the County of Carnarvon, and making an Extension thereof.

## CAP. ccxcvi.

An Act to authorise the Construction of Railways to connect Deal and Walmer, and Dover, in the County of Kent; and for other Purposes.

## CAP. ccxcvii.

An Act to authorise the Amalgamation of the Dumfries, Lochmaben, and Lockerby Junction Railway Company with the Caledonian Railway Company; and for other Purposes.

## CAP. ccxcviii.

An Act for the Amalgamation of divers Railway Companies with the Glasgow and South-western Railway Company; and for other Purposes.

## CAP. ccxcix.

An Act for conferring further Powers on the Great Western Railway Company for the Construction of Works and the Acquisition of Lands, and otherwise in relation to their own Undertaking and the Undertakings of other Companies and Persons; and for other Purposes.

## CAP. ccc.

An Act to consolidate and amend the Provisions relating to the Police of the Town of Greenock; to authorise certain Improvements in the said Town; and for various other Purposes.

## CAP. ccci.

An Act for making Railways from Greenock to the Glasgow and South-western and Bridge of Weir Railways; and for other Purposes.

## CAP. cccii.

An Act to amend the Highbridge Markets and Gas Act; and for other Purposes.

## CAP. ccciii.

An Act for making a Railway from the Westerfield Station, near Ipswich, of the Great Eastern Railway, to Felixstow, in the County of Suffolk; and for other Purposes.

## CAP. ccciv.

An Act for authorising the London and South-western Railway Company to make new Works; and for the Amalgamation with their Undertaking of the Undertakings of divers Railway Companies; and for authorising Arrangements respecting divers Railways; and for regulating and increasing the Capital and Borrowing Powers of the London and South-western Railway Company; and for other Purposes.

## CAP. cccv.

An Act to authorise the Manchester and Milford Railway Company to make certain new Railways in substitution for Part of their authorised Railway and Aberystwith Branch; and to extend the Time for the Purchase of Lands and Completion of Part of their authorised Line; and to give various other Powers to the said Company, and to other Railway Companies; and for other Purposes.

## CAP. cccvi.

An Act for making a Railway from the Cemmaes Road Station on the Cambrian Railway to near the Town of Dinas Mowddwy; and for other Purposes.

## CAP. cccvii.

An Act to enable the Newry and Greenore Railway Company to make certain Deviations in their authorised Line, and to construct certain new Works; and for other Purposes.

## CAP. cccviii.

An Act to provide for a complete Union of the Undertakings of the North British and Edinburgh and Glasgow Railway Companies by Amalgamation; and for other Purposes.

## CAP. cccix.

An Act to authorise the Construction of a Pier at Burntisland and other Works by the North British Railway Company; and for other Purposes.

## CAP. cccx.

An Act for making Railways from the North London Railway to Alexandra Park, and to the Edgware, Highgate, and London Railway; and for other Purposes.

## CAP. cccxi.

An Act for defining and extending the Powers of the Corporation of Oldham in relation to the Improvement of Streets in the Borough, and to Police and other Matters of local Government, and to Gas and Water Supply; and for other Purposes.

## CAP. cccxii.

An Act to authorise the Construction of a Railway between Ross and Monmouth; and for other Purposes.

## CAP. cccxiii.

An Act for dividing the Parish of St. Philip and Jacob, in the City and County of Bristol; and for forming the Out-Parish of St. Philip and Jacob into a distinct and separate Parish; for making further Provision as to the Election and Appointment of Overseers of the Poor for the said Out-Parish, and as to Churchwardens of the said Out-Parish; and for other Purposes.

## CAP. cccxiv.

An Act for the making and maintaining of Stapenhill Bridge over the River Trent near to the Town of Burton-upon-Trent, with Approaches thereto, and for the discontinuing of Stapenhill Ferry across the River; and for other Purposes.

## CAP. cccv.

An Act for making a Railway from near the Aberystwith and Welsh Coast Railway, in the Parish of Towyn, in the County of Merioneth, to the Township of Maestrefnant, in the Direction of Talylyn, to be called "The Talylyn Railway;" and for other Purposes.

## CAP. cccxvi.

An Act for authorising the Vale of Neath Railway Company to raise further Moneys; and for giving Effect to Agreements between them and the Aberdare Valley Railway Company and the London and North-western Railway Company respectively; and for other Purposes.

## CAP. cccxvii.

An Act to authorise the Construction of a Railway from Wotchet to Minehead, in the County of Somerset.

## CAP. cccxviii.

An Act for making Railways in Wiltshire from the London and South-western Railway to the Berks and Hants Railway at Pewsey and Woodborough; and for other Purposes.

## CAP. cccxix.

An Act to authorise Deviations in the Line of the Gloucester Extension of the Worcester, Dean Forest, and Monmouth Railway Company; and to enable the Company to raise additional Capital; and for other Purposes.

## CAP. cccxx.

An Act for authorising the Construction of a Railway from Acton to Brentford; and for other Purposes.

## CAP. cccxxi.

An Act to authorise the West Riding and Grimsby Railway Company to construct a Railway from the South Yorkshire Railway to Lincoln; and for other Purposes.

## CAP. cccxxii.

An Act for incorporating a Company for making a Railway from Portmadoc to Beddgelert, in the Counties of Carnarvon and Merioneth; and for other Purposes.

## CAP. cccxxiii.

An Act to enable the Bishop's Castle Railway Company to make Deviations in their authorised Railway, and a new Line in connexion therewith; to alter the Levels of their authorised Railway; and for other Purposes.

## CAP. cccxxiv.

An Act for enabling the Brecon and Merthyr Tydfil Junction Railway Company to acquire the Hereford, Hay, and Brecon Railway; and for other Purposes.

## CAP. cccxxv.

An Act for the better Regulation and Management of the Docks and other Works at and near to Cardiff of the Trustees and others claiming under the Will of the late Marquis of Bute; for authorising Arrangements with Railway and other Companies; and for other Purposes.

## CAP. cccxxvi.

An Act to confer farther Powers upon the Carnarvon and Llanberis Railway Company; and for other Purposes.

## CAP. cccxxvii.

An Act to vest in the Great Northern, the Manchester, Sheffield, and Lincolnshire, and the Midland Railway Companies, jointly, the Stockport and Woodley Junction, the Stockport, Timperley, and Altrincham Junction, the Cheshire Midland, the West Cheshire, and the Garston and Liverpool Railways; and for other Purposes with respect to the said Undertakings.

## CAP. cccxxviii.

An Act to authorise the Edinburgh and Glasgow Railway Company to make a Railway from Glasgow to Coatbridge, and a Junction with the City of Glasgow Union Railway; and for other Purposes.

## CAP. cccxxix.

An Act for incorporating a Company for making a Railway, to be called "The Furness and Lancaster and Carlisle Union Railway;" and for other other Purposes.

## CAP. cccxxx.

An Act for the Amalgamation of the Leeds, Bradford, and Halifax Junction Railway Company with the Great Northern Railway Company.

## CAP. cccxxxi.

An Act for the Amalgamation of the West Yorkshire Railway Company with the Great Northern Railway Company.

## CAP. cccxxxii.

An Act for conferring Powers on the Lancashire and Yorkshire Railway Company for the Construction of Branch Railways and Works and the Acquisition of Lands; and for other Purposes.

## CAP. cccxxxiii.

An Act for conferring additional Powers on the London and North-western Railway Company in relation to their own Undertaking and the Undertakings of other Companies in England; and for other Purposes.

## CAP. cccxxxiv.

An Act for conferring additional Powers on the London and North-western Railway Company in relation to their own Undertaking and the Undertakings of other Companies in Wales; and for other Purposes.

## CAP. cccxxxv.

An Act for conferring additional Powers on the Midland Railway Company for the Construction of Works, and otherwise in relation to their own Undertaking and the Undertakings of other Companies; and for other Purposes.

## CAP. cccxxxvi.

An Act to repeal the Act relating to the Moses Gate and Ringley Branch Turnpike Roads, and to make other Provisions in lieu thereof; and to authorise new Works; and for other Purposes.

## CAP. cccxxxvii.

An Act to authorise the Widening and Extension of the Nantlle Railway; and for other Purposes.

## CAP. cccxxxviii.

An Act for making a Railway from Christian Malford, in the County of Wilts, to Beachingstoke, in the same County.

## CAP. cccxxxix.

An Act to authorise the North Staffordshire Railway Company to construct certain Railways forming a Loop Line of Railway in the Staffordshire Potteries; and for other Purposes.

## CAP. cccxl.

An Act for authorising the Peterborough, Wisbeach, and Sutton Railway Company to extend their Railway to Crowland; and for other Purposes.

## CAP. cccxli.

An Act to authorise the Construction of Railways in the County of Salop, to be called "The Shrewsbury and Potteries Junction Railway;" and for other Purposes.

## CAP. cccxlii.

An Act for authorising the Sirhowy Railway Company to construct a Railway in substitution for the authorised Extension of their Railway to the Merthyr, Tredegar, and Abergavenny Railway, and to deviate their authorised Railway in the Parish of Bedwellty, and to use Parts of the Merthyr, Tredegar, and Abergavenny Railway; and for confirming the Mode in which certain Roads have been crossed or diverted by the Company; and for suspending the Operation of certain Provisions of the Sirhowy Railway Act, 1860, as to Passenger Trains to be run upon the Railways of the Company and the Monmouthshire Railway; and for other Purposes.



## CAP. cccxlii.

An Act for authorising the South-eastern Railway Company to make new Lines of Railway by way of Extensions of their Railway at Greenwich, Woolwich, and Cranbrook respectively; to acquire additional Lands; to raise further Moneys; and for other Purposes.

## CAP. cccxlii.

An Act to authorise the Construction of a Railway in Essex, to be called "The South Essex Railway."

## CAP. cccxlii.

An Act to authorise the Strathspey Railway Company to extend their Railway; and for other Purposes.

## CAP. cccxlii.

An Act to authorise the Ryde Pier Company to construct certain Tramways at Ryde, in the Isle of Wight; and for other Purposes.

## CAP. cccxlii.

An Act to authorise the London, Chatham, and Dover Railway Company to make a short connecting Railway at Beckenham, and to abandon certain authorised Lines; to make Provisions as to the Working of their Traffic and that of the South-eastern Railway Company; to confer further Powers with reference to the Kent Coast Railway, and Exemptions from Dues and Privileges at Broadstairs, Ramsgate, and Margate; and for other Purposes.

## CAP. cccxlii.

An Act for authorising the Construction of Railways from Bury St. Edmunds, in the County of Suffolk, to Thetford, in the County of Norfolk; and for other Purposes.

## CAP. cccxlii.

An Act to authorise the Llanelly Railway and Dock Company to extend their Railway to the Mumbles.

## CAP. cccli.

An Act for making a Railway from Navan, in the County of Meath, to Kingscourt, in the County of Cavan.

## CAP. cccli.

An Act to authorise the Construction of Railways from Waterford to Dungarvon, in the County of Waterford, and from Lismore, in the County of Waterford, to Fermoy, in the County of Cork; and for other Purposes.

## CAP. cccli.

An Act to confer further Powers upon the Carmarthenshire Railway Company; and for other Purposes.

## CAP. ccclii.

An Act for making a Railway from the Great Southern and Western Railway at Thurles to Clonmel.

## CAP. ccclii.

An Act to enable the Chichester and Midhurst Railway Company to extend their Railway to the London and South-western Railway, near Haslemere; and for other Purposes.

## CAP. cccli.

An Act for making and maintaining the Bedford and Northampton Railway; and for other Purposes.

## CAP. cccli.

An Act for making an Extension of the Blane Valley Railway, in the County of Stirling, and a Diversion of Part of the said Railway; and for other Purposes.

## CAP. ccclii.

An Act for the Extension of the Drayton Junction Railway to Bettisfield; and for other Purposes.

## CAP. ccclii.

An Act for making a Railway from Girvan, in the County of Ayr, to East Challock, in the County of Wigtown; and for other Purposes.

## CAP. cccli.

An Act for enabling the Midland Railway Company to construct Railways from Mansfield to Southwell, and from Mansfield to Worksop, with a Branch to Staveley, and other Branches; and for other Purposes.

## CAP. cccli.

An Act to authorise the Construction of a Railway in the County of Monmouth, to be called "The Newport and Usk Railway;" and for other Purposes.

## CAP. cccli.

An Act to enable the Northampton and Banbury Junction Railway Company to make a Branch at Blisworth; to raise additional Capital; and for other Purposes.

## CAP. ccclii.

An Act to enable the Northampton and Banbury Junction Railway Company to extend their Railway to Chipping Norton and Blockley; and for other Purposes.

## CAP. ccclii.

An Act to enable the North-eastern Railway Company to construct Branch Railways in the North Riding of Yorkshire, and abandon Portions of Railway; and for other Purposes.

## CAP. ccclii.

An Act for making Railways from the Newport, Abergavenny, and Hereford Line of the Great Western Railway Company at Pontypool to Caerleon, and to the Great Western Railway at or near Newport; and for other Purposes.

## CAP. ccclii.

An Act for authorising the Company of Proprietors of the Regent's Canal to improve their Limehouse Basin, and make a new Entrance thereto from the River Thames, and a Wharf on the Thames, and other Works, at Limehouse; for regulating their Capital, and authorising them to raise further Moneys; and for other Purposes.

## CAP. ccclii.

An Act for making Railways in Gloucestershire to connect certain Railways on the East with Railways on the West of the River Severn; and for other Purposes.

## CAP. ccclii.

An Act for incorporating a Company for making a Railway, to be called "The South Wales and Great Western Direct Railway;" and for other Purposes.

## CAP. ccclii.

An Act for the Amalgamation of the Undertakings of the West Hartlepool Harbour and Railway Company and the Cleveland Railway Company with that of the North-eastern Railway Company; and for other Purposes.

## CAP. ccclii.

An Act to incorporate a Company for making the Limerick and North Kerry Junction Railway; and for other Purposes.

## CAP. ccclii.

An Act for authorising the Bodmin and Wadebridge Railway Company to improve the Line of their Railway, and to abandon Portions thereof, and to raise further Moneys; and for authorising Arrangements between them and other Railway Companies; and for other Purposes.

## CAP. ccclii.

An Act to enable the Mid-Wales Railway Company to make Extensions to the Westward, and to abandon the Formation of the Llangurig Branch authorised to be made by the Mid-Wales Railway (Llangurig Branch, &c.) Act, 1863; and for other Purposes.

CAP. cccclxxii.

An Act for authorising the West London Docks and Warehouses Company to extend their Limits of Deviation; to divert or stop up Roads; to alter and vary their Rates and Duties and Rates of Interest; to change their Name; to raise further Moneys; and for other Purposes.

CAP. cccclxxiii.

An Act for making a Railway from the Cornwall Railway near Saltash, to the Tamar Kit Hill and Callington Railway at Callington, in the County of Cornwall.

CAP. cccclxxiv.

An Act for authorising the Launceston, Bodmin, and Wadebridge Junction Railway Company to make an Extension Railway from the Bodmin and Wadebridge Junction Railway at Ruthern Bridge to the Cornwall Railway at Truro, and to raise further Moneys; and for changing the Name of the Company; and for other Purposes.

CAP. cccclxxv.

An Act to authorise the Construction of a Railway from the North Kent Railway to the Medway, and of a Pier in that River; and for other Purposes.

CAP. cccclxxvi.

An Act to authorise the Construction of a Railway in the County of Glamorgan, to be called "The Afon Valley Railway;" and for other Purposes.

CAP. cccclxxvii.

An Act to authorise the Construction of a Dock and other Works at or near Newport, on the Western Side of the River Usk, to be called "The Alexandra Dock," and of Railways to connect the same with neighbouring Railways; and for other Purposes.

CAP. cccclxxviii.

An Act for authorising the Manchester, Sheffield, and Lincolnshire Railway Company to make a Railway to Liverpool; and for other Purposes.

CAP. cccclxxix.

An Act for making certain Railways from the London, Brighton, and South-coast Railway to the East Grinstead, Groombridge, and Tunbridge Wells Railway, and to the Brighton, Uckfield, and Tunbridge Wells Railway; and for other Purposes.

CAP. cccclxxx.

An Act to authorise the Construction of a Railway from the South Wales Railway to Fishguard Bay, and of a Harbour there; and for other Purposes.

CAP. cccclxxxi.

An Act to extend the Time limited for the Purchase of Lands and Completion of Works relating to the Waterford and Passage Railway Company.

CAP. cccclxxxii.

An Act to authorise the Construction of Railways in and near Dublin, to be called "The Dublin Metropolitan Junction Railways."

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